amo REPORT

WASTE MANAGEMENT
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THE WASTE MANAGEMENT PLANNING AND APPROVALS PROCESS

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

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The first report in the AMO Waste Management Study "The Waste Management Planning and Approvals Process" was forwarded to the Honourable James Bradley, Minister of the Environment and the Honourable John Eakins, Minister of Municipal Affairs on May 1, 1989.

EXECUTIVE SUMMARY

This report -- "The Waste Management and Approvals Process" is one of a series of reports on municipal waste management being prepared by the Association of Municipalities of Ontario.

THE ENVIRONMENTAL ASSESSMENT ACT AND THE APPROVAL PROCESS

The Environmental Assessment Act and process has received a good deal of attention from both critics and supporters since it was first introduced in 1976. Many of the concerns regarding the process share some common themes: the process is too cumbersome, too uncertain, takes too long to complete, and is inordinately expensive.

AMO has addressed these concerns from a municipal perspective. A series of practical recommendations are offered aimed at making the environmental assessment process more efficient and workable.

A scoping exercise is introduced to address the need to focus the issues dealt with in an environmental assessment, both in terms of the number of issues and the extent to which each must be addressed.

The government review of environmental assessment submissions is identified as one of the most time consuming components of the process. Recommendations are made which would limit the circulation of submissions, impose a time limit on reviewers for comments, and require the creation of a dedicated environmental assessment review unit within each review agency.

For a proponent, one of the most uncertain aspects of an environmental assessment is the hearing. The Environmental Assessment Board is perceived as having a mandate which requires it to study each proposal before it in an excessively inquisitorial manner. AMO suggests that moderating the investigative nature of the Board could be achieved by changing the purpose of the Environmental Assessment Act to limit its scope from the "betterment of the people of Ontario" to "ensuring that undertakings subject to the Act are environmentally acceptable".

The Association also addresses the uncertainty regarding the roles of the environmental assessment branch and the Waste Management Branch, and the relationship between the two. It is suggested that the roles and responsibilities of the two branches be more clearly defined, and that the Waste Management Branch be the lead agency with respect to municipal waste management. Further, as the lead policy branch, the waste management branch should undertake a review of all legislation relating to municipal waste management in an attempt to eliminate overlap and duplication in the approvals process. Finally, AMO

suggests that the resources of the environmental assessment branch are not adequate, and recommends that these be reviewed.

The pre-submission consultation process is examined as one important element of public participation in the environmental assessment process. It is recommended that this process be given more formal recognition in the Environmental Assessment Act, and that more specific guidelines be prepared to assist proponents in determining what in fact constitutes an acceptable public participation program.

THE WASTE MANAGEMENT MASTER PLAN PROGRAM

The Association offers information and advice to municipalities as well as making recommendations for changes to make the Waste Management Master Plan a more efficient and effective process.

The Waste Management Master Plan Program provides funding to upper tier municipalities, or groups of upper or lower tier municipalities, to cover 50% of the cost of hiring consultants to conduct a study resulting in a 20 year comprehensive waste management master plan. The study process is designed to create a plan to meet the requirements of the Environmental Assessment Act. This means that the entire plan could be submitted for Environmental Assessment Act approval or as background documentation for approval of individual facilities under the plan.

The study is coordinated by a steering committee comprised of municipal representatives from the study area and representatives from the Ministry of the Environment. The study proceeds under terms of reference that break the study down into five stages including data collection, identification of candidate areas and markets, analysis of alternatives, master plan formulation and master plan environmental assessment overview document. Each stage must meet an Environmental Assessment Act level of analysis and includes a public participation process and input from relevant ministries and agencies. Municipalities are advised to consider retaining legal counsel from the beginning, to carefully scrutinize the consultants experience before hiring and are made aware of the new administrative burdens the study process creates for their staff.

Municipal authority for waste management functions is reviewed. The most pressing concern is the statutory creation of permissive authority for counties for waste management. Broader issues of municipal authority are also considered. These issues are derived from the fact that when the Municipal Act and Regional acts were drafted, waste management authority did not clearly encompass activities that are now necessary, such as control over private waste facilities, 4Rs' functions and access to private property for study purposes.

The study itself presents technical challenges particularly with respect to waste composition data and system component selection. The Ministry of the Environment has undertaken a waste composition study and is developing generic models for waste facilities. Recommendations are made with the goal of ensuring that the results of these studies will be useable by municipalities as "off the shelf" models and will be accepted by the Environmental Assessment Board.

The Ministry of the Environment naturally plays a key role in the process since this Ministry determines acceptability of final study submissions. Recommendations are made with the objective of obtaining commitments from the Ministry as to the acceptability of work completed at each stage of the study to ensure greater certainty in the process and reduce the risk of submissions being rejected late in the process due to unacceptable activities completed earlier.

Recommendations are made regarding the staffing resources at both the Waste Management Branch of the Ministry and the Environmental Assessment Board. Concern is expressed regarding the overloading of these staffs from an anticipated significant increase in both waste management master plans studies commenced and environmental assessment hearings.

Public participation and consultation in waste management issues are expected to be the subject of a separate report in this series. However, a recommendation is made supporting the development of generic public participation models by the Ministry. Practical suggestions are also offered to municipalities regarding the need for early involvement of the public and formalities of public meetings to ensure fair and equal opportunities are provided for all interested members of the public. Public participation and the response of the steering committee must be documented throughout the study process.

PART I

THE ENVIRONMENTAL ASSESSMENT ACT AND THE APPROVALS PROCESS

INTRODUCTION

In June, 1980 all municipal undertakings became subject to the Environmental Assessment Act. Under the Act, municipalities wishing to establish a waste management system or facility are required to undertake a defined environmental assessment of the project in order to proceed through the approvals process set out in the Act. This assessment involves identifying reasonable alternatives, considering the environmental effects of each, and then, after weighing the relative advantages and disadvantages of all of the alternatives, selecting a preferred alternative.

Prior to the Environmental Assessment Act municipalities sought approval for a waste disposal site under the Environmental Protection Act. Under this Act application was made to the Ministry of the Environment for a Certificate of Approval. A public hearing would be held into the site-specific application, and would deal with the technical specifications of the application as well as basic health, safety and environmental aspects. The hearing would not include an evaluation of alternatives to the site. (Introduction to Waste Management Planning and the Ontario Environmental Assessment Act. MOE, October 1987). A Hearing Board would then prepare a report with recommendations for the Director of the Approvals Branch, Ministry of the Environment, who would decide whether or not to issue the Certificate of Approval, or issue one with terms and conditions. Recent amendments to the Environmental Protection Act replace the Hearing Board with the Environmental Assessment Board, and give the Board the authority to make decisions with respect to the issuance of Certificates of Approval.

The Environmental Protection Act continues to play a part in the approvals process for municipal waste management undertakings. Where the application of the Environmental Assessment Act to a municipal waste management undertaking is waived, the undertaking proceeds under the Environmental Protection Act to a public hearing before the Environmental Assessment Board. The Board decides whether or not to approve the undertaking and issue a Certificate of Approval.

Where a municipal waste management undertaking is subject to the Environmental Assessment Act and receives the approval of the Environmental Assessment Board, the undertaking still requires a Certificate of Approval to address its technical merits according to the requirements of the Environmental Protection Act. No hearing is required under the Environmental Protection Act if the undertaking is subject to the Environmental Assessment Act. Under Section 34 of the Environmental Assessment Act the Minister is required to waive the Environmental Protection Act hearing and permit the undertaking to proceed under the requirements of the Environmental Assessment Act where the hearing is at the

discretion of the Minister. A hearing can be before the Environmental Assessment Board, or be combined under the Consolidated Hearings Act with the Environmental Assessment Act hearing before a Joint Board.

The Environmental Assessment Act and its comprehensive environmental assessment process therefore represents one part of a larger approvals process, which for a municipal waste management undertaking may also include approval processes under the Planning Act, the Ontario Municipal Board Act, the Expropriations Act and others. The Environmental Assessment Act has been frequently singled out as the greatest contributor to this prodigious approvals procedure.

THE ENVIRONMENTAL ASSESSMENT ACT

The environmental assessment process set out by the Act is made up of several stages, beginning with the submission of an environmental assessment document to the Minister of the Environment, and culminating in the approval of the undertaking by the Minister or the Board. The specific steps of the process are:

Pre-submission Consultation

Before the submission of the environmental assessment document, which signals the beginning of the process as laid out in the Act, the proponent is encouraged to consult with the various parties who will be involved in the process. These include the public and public interest groups, government and agency reviewers, and the Environmental Assessment Branch staff. This **pre-submission consultation** is designed to involve and inform affected parties, identify concerns, and facilitate the resolution of issues prior to the formal preparation of an environmental assessment. Although not a formal requirement of the Act, pre-submission consultation is Ministry of the Environment policy.

According to the Environmental Assessment Branch, pre-submission consultation offers advantages to the proponent and others in the process. (General Guidelines for the Preparation of Environmental Assessments. EAB, Feb. 1986) The proponent can be directed to sources of information necessary to the assessment, and government ministries and agencies and the affected public have the opportunity to identify and present their concerns while the study design is still flexible. In addition, with the early input and advice of those ministries, agencies and Environmental Assessment Branch staff who, with members of the government review team, will be reviewing the subsequent submission for acceptability, the proponent is in a better position to prepare an environmental assessment which will meet the requirements of the Environmental Assessment Act and address the technical concerns and mandates of the members of the government review team.

Environmental Assessment Submission

The second step of the environmental assessment process involves the preparation by the proponent of an **environmental assessment submission**. Subsection 5(3) of the Environmental Assessment Act sets out what a proponent must include in a submission. This section requires that a proponent include a description of the undertaking, and a description of the purpose and a statement of the rationale for the undertaking. The assessment must also include a description and rationale for alternatives to the undertaking and alternative methods of carrying out the undertaking. Further, it must provide a description of the environment that will be affected, either directly or indirectly, a description of these effects, the actions necessary to mitigate or change these effects, and an evaluation of the advantages and disadvantages to the environment of the undertaking and of all of the alternatives.

Upon completing the requirements of the Act the proponent submits the environmental assessment to the Minister of the Environment. The Minister or the proponent may give notice to the public of the receipt of the submission.

Government Review

The next step in the environmental assessment process is the **review** of the proponent's submission by a government review team. The purpose of this review is to assist either the Minister of the Environment, the Environmental Assessment Board, or the Joint Board in deciding on the acceptance of the environmental assessment and the ultimate approval of the undertaking. The review team is comprised of Environmental Assessment Branch staff, staff of other branches of the Ministry of the Environment, and various Provincial ministries and agencies. The Provincial ministries and agencies are requested to evaluate how well the environmental assessment addresses the programs and policies of their respective ministry or agency, and to provide an evaluation of the appropriateness of the technical quality, level of detail and range of alternatives found in the assessment. Each ministry or agency provides this evaluation from the perspective of its mandated area. (Introduction to Waste Management Planning and the Ontario Environmental Assessment Act. MOE, October 1987) At the same time, staff of the Environmental Assessment Branch evaluate the submission to determine whether it meets the requirements of an environmental assessment as set out in Subsection 5(3) of the Act.

The Environmental Assessment Branch brings together the comments of the review team and their own conclusions regarding the submission to prepare a review of the environmental assessment for public comment. This review will include comments of the EA Branch on aspects requiring improvement in the submission. At this point the Minister of the Environment gives notice to the proponent, to any municipality likely to be affected by the undertaking, and to the public that the environmental assessment submission and review are available for public inspection. Within 30 days of this notice any person may make a written submission to the Minister and/or require a hearing before the Environmental Assessment Board.

Acceptance and Approval of Submission

The final step in the environmental assessment process involves the **acceptance** and **approval** of the proponent's submission and undertaking, respectively. Where no requirement for a hearing has been submitted the Minister may decide on the acceptance of the submission. If no hearing is requested on this decision, the Minister may make a decision on the approval of the undertaking. Alternately, having made the decision regarding acceptance, the Minister may send the submission to a hearing before the Environmental Assessment Board for a decision regarding approval of the undertaking. The Minister also has the option, at any point in the process, of having the Environmental Assessment Board conduct a hearing and make the decisions regarding both acceptance and approval. (General Guidelines for the Preparation of Environmental Assessments. EAB, Feb. 1986)

Hearings

There are four situations then in which a **hearing** may be required under the Environmental Assessment Act:

- anyone may require a hearing within the 30 days following notice of the release of the environmental assessment and review;
- either the proponent or anyone who made a written submission on the environmental assessment or the review may require a hearing within 15 days of the Minister proposing to amend the environmental assessment submission;
- where the Minister has given notice of acceptance of the submission either the proponent or anyone who made a written submission may, within 15 days, require a hearing into the approval of the undertaking;
- the Minister may require a hearing at any stage in the process.

Hearings under the Environmental Assessment Act are held before a panel made up of members of the Environmental Assessment Board, or the Joint Board where hearings under more than one Act are required. Under the Environmental Assessment Act, the Environmental Assessment Board is empowered to determine its own practices and procedures, subject to the Statutory Powers and Procedures Act and Cabinet approval. The Environmental Assessment Board is empowered to make a decision regarding the acceptance of the environmental assessment and the approval of the undertaking. Within 28 days of receiving the decision of the Board the Minister may vary or replace it with his/her own decision or require that the Board hold a new hearing and reconsider its decision.

THE ENVIRONMENTAL ASSESSMENT PROCESS - CONCERNS AND CURES

Since the Environmental Assessment Act was first introduced in 1976 it has regularly drawn the attention of both critics and supporters, who have provided seemingly endless counsel on ways to improve the Act and its administration. Recently however, this attention has intensified, and has come from a broader spectrum of stakeholders. The waste management crisis has compelled municipal government to collectively petition the Province, pressing for reforms to the current municipal waste management planning and approvals process. For its part, the Province has responded with new programs and increased funding for the planning and implementation stages of waste management, and a comprehensive, multi-interest review of the environmental assessment process.

The list of concerns with Ontario's environmental assessment process has grown with experience in the application of the Environmental Assessment Act. Every party that has been involved in environmental assessment has contributed its own list of concerns with the process: the public, public interest groups, municipalities, industry, consultants, lawyers, government reviewers, other provincial ministries, the Ministry of the Environment, the Environmental Assessment Branch, and even the Environmental Assessment Board.

Generally speaking, many of these concerns share the same prevailing themes. Among the most common:

- The process is too cumbersome.
- The process is too uncertain.
- The process takes too long to complete.
- As a result of the above concerns, the process is inordinately expensive, both for proponents and others involved.

These broad conclusions regarding environmental assessment invariably stem from encountering the many complex, individual issues associated with the process. The majority of the recommendations of this report are aimed at these individual issues, since resolving at least the most predominant of these should assist in alleviating the larger concerns. In addition to this incremental approach the report includes a more fundamental rethinking of the environmental assessment process, leading up to the first recommendation.

The Environmental Assessment Process and the Planning Process

A great deal of attention is currently being given to the environmental assessment process in Ontario. While reviews, studies and commentaries aimed at improving its "efficiency, effectiveness and fairness" (CELERF, 1986) abound, few critics suggest wholesale abandonment of the process. In fact, most critics acknowledge that environmental

assessment contributes to better overall planning and decision-making (AMO Report 84-4, 1984).

One problem area that has been recently noted is the relationship of the environmental assessment process to other existing approvals processes in Ontario. There is a general feeling that the environmental assessment process is not well coordinated with other approvals processes, and that overlap and duplication exist which contribute to increased overall time and costs for approval.

In particular, from the municipal perspective there is a great deal of frustration with the apparent lack of integration between the environmental assessment process and the planning process under the Planning Act. An argument has been made (Regional Chairmen's Brief, Sept. 29, 1988) that the Planning Act and Environmental Assessment Act processes overlap with respect to subject matter, and that the Environmental Assessment Act duplicates the requirements of the Planning Act, to the extent that it requires a determination of need for a project, analysis of alternatives, assessment of potential impacts, and choice of a preferred alternative. The solution offered is that, where a planning process has already been undertaken in the development of land use planning policy documents, the Environmental Assessment Act process should be limited to an assessment of site specific, operational and design aspects. The result is that part of the environmental assessment process is "folded" into the planning process, recognizing the requirements of the Planning Act as a substitute for those of the Environmental Assessment Act.

A weakness in this argument lies in the absence of any statutory requirements in the Planning Act relating to the determination of need and the assessment of alternatives. In practice such studies may be undertaken, as in, for example, the development of a master servicing plan for a municipality. However, given the lack of statutory requirements with respect to the study of need and alternatives, the absence of any detailed criteria by which an approval body determines the acceptability of a proposal, and the more narrow definition of the environment, it is difficult to argue that the planning process could be a substitute for the environmental assessment process.

Waste management is, among other things, an important municipal land use as well as a matter of social, economic and environmental concern. For this reason, waste management should be recognized as a matter of provincial concern under the Planning Act. The problem remains that, where an undertaking requires separate approvals under the Planning Act and the Environmental Assessment Act, the process becomes long, costly, and apparently redundant.

If some form of environmental assessment, though not necessarily the process we currently have under the Act, could be incorporated formally into the land use planning process, then the planning process in itself would constitute an environmental impact assessment and there should be no need to subject the proposal to a separate environmental assessment process.

This long-term reform would necessitate a review of the current system of approvals and the roles and functions of associated approval and regulatory bodies. These would need to be

altered were this integration of environmental assessment into the planning process to occur. For example, the Environmental Assessment Branch would no longer be necessary to enforce the Environmental Assessment Act. The Act itself would likely be redundant. The role of the Branch might be one of educating and assisting in the integration of environmental assessment methods into land use planning at the municipal provincial levels.

Projects under the planning process could undergo an initial assessment by the municipality of expected environmental impacts, then be subject to a "level" of environmental assessment corresponding to the significance of the expected impacts. For example, a housing development in the urban core would be subject to a relatively low-level assessment, while a development on the urban-rural fringe would require a more thorough review. These environmental impact assessments would likely resemble the environmental studies currently undertaken in any land use planning decision. They would, however, be formally recognized and required under the Planning Act.

The Environmental Assessment Act was introduced to fill a perceived void in the land use planning process: methodical and thorough consideration of the environment. Modifying the planning process to incorporate environmental impact assessment into it in a formal manner would result in a single, more efficient planning approval process.

RECOMMENDATION 1

That the Planning Act be amended to formally include a form of environmental impact assessment as part of the planning process, such that there be no need to subject an undertaking to a separate environmental assessment process.

A Provincial Waste Management Strategy

Despite the Environmental Assessment Act and Waste Management Master Plan program, there is little in the way of broad provincial policy to assist in guiding or forming the framework within which municipalities can plan for waste management. A provincial waste management strategy (jointly developed by the province and municipalities) outlining government policy with respect to objectives, administration, implementation, technologies, targets, etc. would give municipalities clearer direction with respect to their role, and would provide a basis for making consistent policy decisions with respect to waste management at both the municipal and provincial levels.

RECOMMENDATION 2

That the province, in consultation with municipalities, develop a provincial waste management strategy which addresses such matters as:

- *provincial waste management goals which all municipal plans should include;*
- *the relative roles of the provincial and municipal levels of government and the private sector;*
- *a hierarchy of preferred waste management systems and methods;*
- *reasonable targets;*
- *a time frame of 40 years;*
- *a review/update mechanism.*

Scoping and Level of Detail

Given the far-reaching definition of the environment employed in the Environmental Assessment Act and the broad but general requirements under Subsection 5(3) for preparing an environmental assessment submission, a great deal of uncertainty exists with respect to determining what constitutes an appropriate level of detail in a submission. Simply put, a proponent, when faced with a request or comment from the EA Branch, a government reviewer, or the public is inclined to address the point, however seemingly insignificant or irrelevant, rather than risk jeopardizing the submission at a hearing. The process of a proponent addressing endless concerns, at great cost, simply to reduce the risk of failure at a hearing is driven by the absence of clear agreements, assurances, guidelines or approvals dictating what is required and when enough is enough.

Scoping

One proposal which has recently emerged to deal with this problem is broadly termed **scoping**. Scoping refers to the process of progressively narrowing the range or number of issues being dealt with by all parties within the context of an environmental assessment process. In this way the study design of each environmental assessment is fashioned by the parties involved. Much of the recent attention given to the notion of scoping has proposed the process at the pre-hearing stage, however many issues could be resolved or set aside at a much earlier point if scoping was to take place earlier in the process. A scoping exercise will set out more clearly the issues that a proponent should focus its resources upon, and streamline a process that is incapable of responding to "emergencies". From the proponent's perspective there would appear to be merit in initiating a scoping exercise as early in the planning process as possible.

On the surface scoping appears to be a simple exercise. In fact, there are so many contentious questions associated with scoping as to seriously threaten its chances of successful implementation. Some of these include:

- is the process voluntary or mandatory?
- who directs the scoping process - the proponent, the EA Branch, the EA Board, some other independent body?
- what is necessary to declare an issue "scoped" out of the process?
- who are the parties to a scoping exercise?
- what of groups which become involved in the environmental assessment process at a later stage, for example, as a result of the selection of a particular site?
- is a "scoped" issue closed from further scrutiny?
- is the Board bound by the results of a scoping exercise?

Although these present significant hurdles, the potential benefits of a process aimed at significantly reducing unnecessary work and redirecting energies to good environmental planning merits some effort toward developing a suitable scoping mechanism.

Scoping should be a formal procedure, in order to ensure a measure of status before the Environmental Assessment Board. This status is essential to instilling some certainty or confidence in the results of the scoping exercise. Scoping should be administered by a Panel, made up of a member of the Environmental Assessment Board. The member assigned to scope a particular environmental assessment should not be eligible to subsequently sit on the Board hearing the issue. Having a member of the Board oversee the scoping process would lend some public credibility to the exercise, eliminate any conflict of interest that might be perceived in a Ministry or proponent conducted process, and give the exercise a degree of status before the EA Board.

Scoping should take place at least two points: before the environmental assessment process gets underway and before a hearing. As noted above, employing scoping early in the planning process will ensure the most effective use of the resources of all participants. Likewise, scoping prior to a hearing will achieve the same objective for the hearing.

A scoping session should be held as early in the planning process as possible, though the Panel should ensure that the exercise does not begin before the undertaking is sufficiently defined so as to permit affected parties to recognize an interest. The session should involve all parties: the proponent, the environmental assessment branch, the government review team, and any members or groups of public with an interest in the matter. Individuals and public groups could be identified as "interveners" using the criteria set out in the province's

new Intervenor Funding Project Act, 1988. Ideally, the scoping hearing and intervenor funding hearing would be coordinated in some fashion, and could be conducted by the same Panel. This would, however, require that intervenor funding be considered much earlier in the process than contemplated under the new Act.

The scoping hearing should address two matters: the range of issues associated with the project, and the level of detail to which each issue needs to be studied. The purpose of the hearing should be to establish the parameters for the subsequent environmental assessment.

Conclusions regarding the range of issues and level of detail should be reached by agreement between the parties. The Panel should be empowered to scope an issue out of the process where there is no agreement amongst the parties. The Panel should not, however, be able to retain an issue which the parties have agreed to dispose of. Finally, the Board should be bound by any agreements reached at the scoping hearing.

RECOMMENDATION 3

That a scoping mechanism be developed and adopted under the Environmental Assessment Act, and that this mechanism:

- ***be a formal mechanism under the Act or the regulations to the Act;***
- ***be administered by a Panel made up of one member of the Environmental Assessment Board who will not be eligible to subsequently sit on the Board hearing the issue;***
- ***include at least two steps: pre-process and pre-hearing;***
- ***include a formal notice procedure to ensure wide advertisement;***
- ***involve all affected parties, including the proponent, the environmental assessment branch, the government review team, and any members of the public or any interest group with an interest in the matter;***
- ***address the range of issues and the level of detail to which each issue should be studied;***
- ***include a requirement that objections to issues be clearly documented;***
- ***bind the Board.***

Level of Detail

A second concern which may be addressed in the exercise of scoping is the manner or degree to which each issue must be assessed. A proponent may have a relatively clear idea of what issues should be considered in its environmental assessment, but be unsure of what **level of detail** or depth of analysis is required. This is best illustrated by the choice between

employing secondary information (a "desktop" study) and undertaking primary data collection in the field to assess a particular subject. The first route is less expensive, and may be suitable for some aspects. The second, though far more expensive, will provide the greater detail necessary in some circumstances. The proponent's dilemma is in deciding what level of detail will be required for each aspect to satisfy the expectations of reviewers and the Board. The escalating level of detail required for environmental assessments is prompted by the increasingly adversarial nature of the hearings process. **In the absence of clearly articulated expectations the tendency for the proponent to "overstudy" will continue, increasing both the cost and time of the process.**

One way of reducing the uncertainty faced by proponents regarding level of detail lies in the preparation of explicit **reviewer expectation guidelines.** (MOE Workshop on the EA Process. Dec.2, 1988) These expectations could be organized in a checklist fashion, setting out the requirements of each reviewer. These checklists could then be used in the scoping exercise to assist in delineating the design of the environmental assessment. However, because of the complex and varied nature of environmental assessments, study designs should be flexible and capable of evolving to address issues that are unique to each study.

RECOMMENDATION 4

That government review agencies develop explicit guidelines, setting out reasonable parameters for environmental assessments.

The Government Review

The circulation of a proponent's environmental assessment submission to the various reviewers which make up the government review team is considered one of the most time consuming elements of the environmental assessment process. The circulation list is very wide, and no formal time limit is set out in the Act within which reviewers must submit their comments. With the added uncertainty regarding reviewers' expectations outlined above, the **government review** is an arduous process that requires streamlining and focusing to become more efficient and productive.

Firstly, the government review team should prepare a checklist of reviewer expectations, as noted above, to encourage and permit proponents to concentrate their efforts on planning rather than navigating the approvals process.

The review agency **circulation lists** for environmental assessment submissions should be limited to agencies which can reasonably be expected to have concerns or comments with a particular proposal. Other agencies should be required to request the opportunity to comment on submissions from a circulated listing.

For those agencies reviewing an environmental assessment submission a **time limit** of 60 days should be imposed under the Act. If comments are not received from a reviewer within this period the agency should be deemed to have no concerns with the proposal.

Documented reviewer expectations will add consistency over time to the government review of proposals. Each review agency should be required to designate an appropriate number of qualified staff as an **environmental assessment review section**, to further ensure consistent and timely reviews of submissions. Each review agency having designated review staff would permit the formation of a inter-agency **dedicated review team** for each project. This review team would be involved in pre-submission consultation, scoping sessions, and the government review.

Some Ministries have several branches which individually submit comments on one particular project. This is especially true of the Ministry of the Environment. Where this is the case, the branch comments should be coordinated through one "window" to avoid inconsistent comments and to facilitate communication in the event the proponent has comments or questions regarding a review.

Finally, reviewers should be liable to be required to present and support their views at a hearing. This would not be unduly onerous on reviewers, since reviewer guidelines would be in place to provide a framework for comments. It would, however, impart **accountability** to the review process.

RECOMMENDATION 5

That government review agency circulation lists be limited to those agencies which can be reasonably expected to have concerns or comments on a particular proposal.

RECOMMENDATION 6

That a time limit of 60 days be imposed under the Act on the government review.

RECOMMENDATION 7

That each government review agency create an environmental assessment review section, made up of an appropriate number of qualified staff.

RECOMMENDATION 8

That, where one Ministry has several agencies within it commenting on an environmental assessment, comments be coordinated through a single "window".

The Environmental Assessment Board

Under the Environmental Assessment Act a hearing may be required by any person having expressed an identifiable interest in the environmental assessment. Statistics indicate that only a small number of environmental assessments proceed to a hearing. (Environmental Planning and Environmental Assessment: Proactive Regulation by Administrative Tribunal. D. Paul Emond, 1988) Nevertheless, given the current notoriety of waste management, unless all issues between the proponent, the EA Branch, the government review agencies and the public can be resolved during the preparation of the submission, the likelihood of a hearing would seem to be considerable.

The technical and legal aspects of a waste management environmental assessment combine with the generally adversarial nature of a hearing under the Environmental Assessment Act to produce an often drawn out and costly exercise whose outcome is uncertain.

One variable that has been noted for its contribution to the unpredictability of the hearing process is the **Environmental Assessment Board**. From a municipal perspective this "unpredictability" stems from the difference in operating style between the Environmental Assessment Board and the Ontario Municipal Board. Municipal planning matters have traditionally been dealt with by the OMB, which has concerned itself with the question of whether a municipal decision has followed due process within the requirements of the law. The EAB, on the other hand, more subjectively examines a municipal decision on its merits. This suggests that a decision reached by a municipal council in a procedurally correct manner may not receive the approval of the EAB if the Board feels that the decision is not in the interests of the environment. The suggestion has been made that, were the EAB to operate more like the OMB, the level of unpredictability, and thus the time and costs involved in the proponent attempting to reduce the risk of failure, would diminish. (Lederer's brief to OMAA. March, 1988)

The simplicity of this argument is attractive. However, the fundamental difference in the operating philosophies of the two Boards can be traced to differences in the purpose of each Board's enabling legislation. The Environmental Assessment Act has as its purpose **"...the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment."** Section 14 (2) of the Act requires the decision-making body (either the Minister or the Board) to consider the purpose of the Act in deciding whether to approve the undertaking. Thus the purpose outlined in Section 2 of the Environmental Assessment Act imposes a statutory responsibility on the Environmental Assessment Board to satisfy itself that an undertaking is for the betterment of the people of Ontario. It is because of this responsibility that the Board assumes an "inquisitorial" nature in its hearings.

The Planning Act, on the other hand, has no stated purpose. This has left the Ontario Municipal Board to develop its own mandate to guide its deliberations; that is, to enable municipalities to plan and manage development.

Were the Environmental Assessment Board to assume the operating philosophy of the Ontario Municipal Board it would not satisfy its statutory responsibility. Moderating the investigative nature of the Environmental Assessment Board could be achieved by changing the purpose of the Environmental Assessment Act to limit its scope from the "betterment of the people of Ontario" to "ensuring that undertakings subject to the Act are environmentally acceptable". Shifting the aim of the Act from what is environmentally "best" to what is environmentally "acceptable" would more appropriately reflect the use of the Act as a piece of legislation governing a planning process.

> ***RECOMMENDATION 9***
>
> ***That, in order to provide the Environmental Assessment Board with a more focused operating mandate, the purpose of the Environmental Assessment Act be changed from "the betterment of the people of Ontario" to "ensuring that undertakings subject to the Act are environmentally acceptable".***

The Environmental Assessment and Waste Management Branches

With respect to municipal waste management there is considerable uncertainty regarding the roles of the environmental assessment branch and the waste management branch and the relationship between the two. It is unclear whether the primary role of the environmental assessment branch, for example, is one of facilitator, auditor or enforcer. Likewise, the waste management branch often provides both technical advice on waste management matters and planning advice on the environmental assessment process. **What is needed is a clear demarcation of roles and responsibilities between the two branches.**

Because of its expertise in the area of waste management policy, the **waste management branch should be the lead agency in municipal waste management.** The role of the branch in this capacity would be to assist and advise municipalities on policy matters relating to waste management systems, technologies, facility siting aspects and planning. The waste management branch, as the lead agency, could also undertake a comprehensive review of all relevant legislation affecting municipal waste management. The intent of such a review would be to reduce or eliminate duplicative approval requirements, and generally streamline the overall approvals process. The Ministry's environmental approvals and land use planning branch would provide the necessary technical advice and expertise in these areas. The role of the waste management branch would not include interpreting the environmental assessment process for the purposes of municipal waste management environmental assessments.

The environmental assessment branch role should be to ensure that the environmental assessment process is adhered to or followed. This would involve advice of a planning or process oriented nature. As an example, given a range of waste management technologies proposed by a municipality (on the advice of the waste management branch) the environmental assessment branch would limit its advice to the appropriateness of the range of alternatives being considered relative to the interpreted requirements of the Act. The branch would not comment on the suitability or technical merits of the technologies.

Municipal waste management is only one aspect that falls under the ambit of the environmental assessment process. Other issues such as timber management and highway construction involve other ministries within the government. The environmental assessment process interacts with planning processes across and between various levels of government. Given this, the long-term goal of the environmental assessment branch should be to promote the use of the philosophy and concepts of environmental planning and assessment within these other planning processes, rather than the current "after-the-fact" application of environmental considerations.

Fostering the integration of environmental planning into other planning processes will require an extensive education and communication program by the branch. Currently the branch appears to be locked into an auditing function, and understaffed to keep pace with the workload. The branch currently has 15 planners and 300 cases, 100 of which are in pre-submission consultation requiring intense participation by branch staff. The branch's workload has increased by at least 50% in the past 2 years. The education and promotion of environmental planning may, if successfully incorporated into other planning processes, reduce the need for the branch to "audit" proposals as intensively in the future. In the short term however, an added education and promotion function would necessitate a review of the branch's resources.

RECOMMENDATION 10

That there be a clear demarcation of roles and responsibilities between the Environmental Assessment Branch and the Waste Management Branch with respect to municipal waste management.

RECOMMENDATION 11

That the Waste Management Branch be the lead agency in municipal waste management.

RECOMMENDATION 12

That the Waste Management Branch coordinate a review of legislation relating to municipal waste management, and that this review be designed to streamline and eliminate duplication of requirements.

RECOMMENDATION 13

That the resources of the Environmental Assessment Branch be reviewed to ensure that adequate resources are in place.

Public Participation

While it is commonly accepted that the public have a part to play in environmental assessment, it is difficult to determine under the current environmental assessment process what the nature of this involvement should be or is required to be. Pre-submission consultation represents an attempt by the Ministry of the Environment to introduce some guidelines requiring that the affected public have been informed of, if not involved in, the development of a proponent's environmental assessment at an early stage. This process is not a formal requirement of the Environmental Assessment Act, but is a policy of the Ministry of the Environment. A proponent's pre-submission consultation process forms part of the formal environmental assessment submission, and will come under the scrutiny of the Board in the event of a hearing. The Environmental Assessment Branch has prepared guidelines for pre-submission consultation, though these are very broad and vague, particularly with respect to the responsibilities of the proponent. A study currently underway by the Ministry of the Environment into public participation in waste management planning may produce guidelines on what would constitute an acceptable public participation program. The Association supports this work, and encourages the Ministry to develop specific guidelines. Though pre-submission consultation is playing an increasingly important and formal role in the environmental assessment process, proponents remain without a precise description of what is required of them to satisfy the branch and the Board.

RECOMMENDATION 14

That pre-submission consultation be given formal status through inclusion in the Environmental Assessment Act.

PART II

WASTE MANAGEMENT MASTER PLANNING

SUMMARY OF PROGRAM AND PROCESS

According to Ministry of Environment data approximately three hundred municipalities in Ontario have less than a five year capacity in their landfill sites left. Of these three hundred, one hundred and sixty have just two years left[1]. The Environmental Assessment Act has applied to new municipal waste management undertakings since 1980, it did not apply when most of the existing waste disposal sites were created. Obviously many Ontario municipalities are, or will be in the very near future, confronted with the need to think about waste disposal in ways they have never had to before.

The Waste Management Master Plan Program was developed from the earlier area waste management study program. The idea behind the program is to encourage municipalities to voluntarily enter into a comprehensive waste management study process by providing provincial funding assistance chiefly for the hiring of a consultant to conduct the study.

The Waste Management Master Plan Program is one of four Ministry of the Environment programs providing funding to municipalities in the area of waste management. The other three are:

1. The 4Rs Initiatives. These include The Municipal Recycling Support Program and programs for municipal waste recovery and reduce/reuse activities.

2. The Financial Assistance Program which provides assistance to municipalities for developing new facilities, or for expanding existing facilities such as landfills, transfer stations and processing facilities.

3. The Waste Management Improvement Program to upgrade existing municipal sites, to close sites and to do investigative studies or provide remedial measures at active sites.

These three programs are aimed at the implementation of waste management activities. The Waste Management Master Plan Program is aimed exclusively at the planning aspect of waste management.

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[1] As of the fall of 1988. From conversation with Ministry of Environment staff.

Because the idea of comprehensive waste management planning was new to municipalities, consulting firms, and the Ministry of the Environment, the program has gone through refinements in its terms of reference. There are currently thirty five Waste Management Master Plans under way. Two hundred and twenty municipalities have expressed interest in entering the program.

The purpose of this section of the paper is to review the Waste Management Master Plan Program, offer information and advice to municipalities and to recommend changes to make it a more efficient and effective process. This section of the paper is based largely on Ministry of the Environment Waste Management Master Plan Program materials and interviews with people involved in the program including municipal representatives, consultants and Ministry of the Environment staff.

Some of the ongoing waste management master plan studies began several years ago and are operating under a terms of reference that are substantially different than those currently in effect.

In 1982 the Ministry of the Environment changed the area waste management study program to direct the planning approach towards meeting the requirements of the Environmental Assessment Act. The terms of reference have been amended since, with the goal of greater detail and clarity as to exactly what is required at each stage of the study process.[2]

The Waste Management Master Plan Program in its current form is designed to assist municipalities in developing long range (20 year) comprehensive waste management plans, in an approach that municipalities can use to meet the requirements for approval under the Environmental Assessment Act, to acquire new or expanded waste management facilities. The Ministry of the Environment provides up to 50% funding assistance to regional municipalities, counties or groups of municipalities (the study area) to hire a consultant to prepare a waste management master plan. The Ministry of the Environment recommends and encourages municipalities to develop a waste management master plan.

Structure of the Study

The waste management master plan study is co-ordinated by a steering committee comprised of municipal representatives from the study area and representatives from the Ministry of the Environment. The representatives from the Ministry are selected by the Minister and include a member of the District office and a member from the Waste Management Branch, each of whom can vote, and one non-voting representative from the Environmental Assessment Branch. Draft agreements to form the steering committee and schedules thereto that establish the functions of the steering committee and the public liaison committee and the cost sharing agreement, are all available from the Ministry.

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[2] Waste Management Master Plans -- Information Summary by Ministry of the Environment. August 5, 1987.

The public liaison committee was formerly called the public advisory committee. The name was changed to more accurately reflect the role of this committee. The public liaison committee membership is limited to members of the public only and it attempts to truly represent the public interest. It's activities are funded and directed by the steering committee. The public liaison committee may appoint two members to sit on the steering committee and they may vote on all non-financial and non-political decisions. The public liaison committee presents reports to the steering committee on all aspects of the master plan study and while it may have some involvement in the general public participation program, the public participation program is usually coordinated by a consultant.

The cost sharing agreement is for municipalities without regional government, or inter-regional waste management master plans. It outlines a formula by which the costs of the study are to be shared by the member municipalities in the study area.

Municipalities may also find it necessary to form project teams and/or technical sub-committees that will include the consultant, the Ministry representatives and municipal representatives with expertise in planning, engineering, finance, law etc. These committees will actually perform and/or review the day to day development of the study in their area of expertise.

THE STUDY PROCESS

The Terms of Reference

The guidelines for the preparation of waste management master plans are the generic terms of reference and are available from the Ministry. The generic terms of reference are modified by each steering committee to suit the needs of the study area in consultation with the Ministry representatives, other Government reviewers and the public. The preamble to the terms of reference indicates that the participating municipalities have advertised in adjacent jurisdictions to encourage participation. They have also contacted local interest groups to explain the waste management master plan process and gain public input before commencing the study.

Study Goal

The terms of reference then set out the Study Goal and Scope of the Study. The Study goal is to develop a plan with the following characteristics: a) a comprehensive review of all reasonable waste management technologies and processes, b) the integration of source separation as a waste management system component, c) a public and review agency consultation process, d) recommendation of a preferred waste management system that is the best alternative from the perspective of the broad definition of the "environment" set out in Clause 1(c) of the Environmental Assessment Act.

The completed waste management master plan can then be used in two ways to meet the requirements of the Environmental Assessment Act. The plan can be used as a background document providing the rationale when individual components of the waste management system are submitted for environmental assessment approval. For example, for an individual environmental assessment of a proposed landfill site the master plan would be submitted to provide details of the environment and the waste stream into which the landfill site is to be placed as well as the overall waste management system that it will form a part of. This is the kind of background information that would likely be required for the individual environmental assessment even if a waste management master plan study had not been performed.

The second way the completed master plan could be used is as a complete submission for an environmental assessment approval itself. This means that all of the components of the master plan could receive environmental assessment approval at the same time as a complete and comprehensive package. This rather ambitious goal can perhaps be seen as the hoped for ultimate objective of the Waste Management Master Plan Program.

It is possible that under this kind of environmental assessment, the master plan could be approved while still leaving options open. For example, a completed plan could list three possible landfill sites, two possible energy from waste facility sites, and two possible waste materials recycling plants. The plan could require only the actual implementation of one of each of these sites but receive an environmental assessment approval for all of the possible optional sites. The proponent would then only be required to obtain Environmental Protection Act approval for the actual construction of the chosen sites. This type of approval has not yet actually been obtained in Ontario. No entire waste management master plan (for more than a single landfill site) has yet been submitted for approval and it is not certain that one actually will be. There are two main reasons for expecting that few (if any) waste management master plans will be submitted for overall approval before site specific approval is sought. Both reasons relate to the length of time it takes for studies to be completed.

Experience has shown that at least a six year time frame from the beginning of the study to environmental assessment approval should be expected (this is an estimate since only one waste management master plan has been approved so far). Because many municipalities will find their existing waste management system (usually landfill) is at capacity before the waste management master plan study is completed they will need to do an individual environmental assessment submission for at least one facility before they have completed the waste management master plan.

The other reason it is uncertain whether an entire waste management master plan will ever be submitted for environmental assessment approval is that because waste management master plans take so long to complete, the data base and other factors in the study may be out of date before the study is finished. The study itself will then not be accurate enough for submission for environmental assessment approval, thereby suggesting that facility specific environmental assessments will be necessary.

The issue of the length of time for completion of waste management master plans is addressed further in this paper. It is possible that if the recommended amendments to the process as presented in this paper are implemented then it will be possible to anticipate entire waste management master plans being submitted for environmental assessment approval.

Study Scope

The scope of the waste management master plan study is very broad and must address the needs of the study area for a minimum 20 year period. Evaluation criteria will be established and, subject to review of the Government and the public, will be used to evaluate potential system components. Evaluation of reasonable alternatives will be based on the advantages and disadvantages to the environment that remain after a net effects analysis has been carried out.

Net effects, as defined in the generic terms of reference, refers to the residual environmental effects (both positive and negative) that remain on balance after potential mitigation measures are added to the gross negative effects and potential enhancement measures are added to the gross positive effects of each alternative under consideration. In layperson terms this means that when evaluating a waste management facility (like a landfill site) that would cause damage to the environment, possible measures that could be taken to reduce that damage (like leachate control system and landscaping) must be taken into account before finally assessing that facility. The same must be done for facilities that may have beneficial effects on the environment. Any measures that could add to those positive effects must also be considered before finally assessing that facility.

Net Effects Equation:

Example #1 -- Sanitary Landfill Site

Gross environmental damage (landfill site)
PLUS
Damage reduction measures (leachate control & landscaping)

EQUALS Net Effects

Example #2 -- Recycling Depot

Gross environmental benefit (recycling depot, reduction of garbage going to landfill)
PLUS
Extra benefits added (income from sale of recyclable material)

EQUALS Net Effects

Public input to the process will be achieved through the formation of an advisory committee with public and municipal representation, as well as a public liaison committee. A public consultation program seeking participation with public interest groups and the general public will also be established (public participation is considered more fully later in this paper). All public and review agency concerns must be documented and addressed at each stage of the process. The process includes a review of financial and administrative procedures and identifies all costs of the plan. The plan will establish an implementation program and a system for review of the plan.

Since the scope of the study is to address the needs of the study area for a 20 year period, there must be a mechanism in place to keep the plan flexible to adapt to changes that will occur in the environment and in waste management technologies. The terms of reference indicate that the plan is required to include recommendations on "...an identified procedure for updating the Master Plan including public and reviewer input. The procedure includes criteria and guidelines for future inclusion of additional facilities into the waste management system which may be appropriate in changing circumstances."[3]

Study Stages

The terms of reference then breaks the study down into five stages:

1. Data Collection - describe the study area, prepare a waste inventory, review costs, evaluate existing facilities (including remaining capacity in waste management systems adjacent to the study area), determine future requirements, review alternative technology options (this description must include a generic assessment of all of the net effects of each alternative including costs and natural, social, economic, financial, cultural, technical and land use planning effects), and develop evaluation criteria.

2A. Identification of Candidate Areas and Markets - determine candidate areas for facilities including landfill, recovered material and energy markets, and recommend reasonable types of facilities for the study area waste management system.

2B. Analysis of Alternatives - determine and rank potential sites and markets, compare existing system against possible new systems and rank the preferred sites, systems and markets.

3A. Master Plan Formulation - after the selection of a preferred waste management system is approved by the Steering Committee and endorsed by the participating Councils and the Ministry of the Environment, the consultant will undertake the preparation of the master plan. The master plan will identify the preferred system for waste management in the study area and how best to implement that system including a detailed implementation schedule and an updating mechanism.

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[3] Generic Terms of Reference, Stage 3A, par. (ii)(f).

3B. Master Plan Environmental Assessment Overview Document - if the master plan is to be submitted for an Environmental Assessment Act approval, either as a complete package with all necessary facilities included, or as background rationale for an individual site specific environmental assessment, a summary document must be prepared including: a summary of the three stages; a description of the undertaking for which the approval is being sought; an outline of what approvals are being sought; highlights of the rationale for key decisions made with regard to the identification and evaluation of alternatives; a summary of the components necessary to satisfy the requirements of subsection 5(3) of the Environmental Assessment Act.

All stages include an Environmental Assessment Act level of analysis (natural, social,cultural, economic, financial, technical,land-use) of the net effects of alternative technologies, sites and systems. The reports for the end of stages 1,2B and 3A will document input from the public and government review agencies and how it was incorporated into and effected the decision-making process.

The Ministry has issued the following advice about the necessity of meeting the Environmental Assessment Act level of study for each stage of the plan under the terms of reference, "Experience across the Province under the Master Plan program has indicated that considerable effort is required by the Ministry and the Steering Committee to ensure that the Terms of Reference are met at each stage of the plan before proceeding to the next stage. This effort is necessary because decisions have been made at a particular stage without the benefit of all the required information, especially environmental assessment information. This practice is not acceptable to the Ministry." [See appendix A "Information For Municipalities Undertaking the Development of a Waste Management Master Plan"]

It should be noted that under this program the Ministry funds only the planning aspects of the master plan. The Ministry does not fund site specific engineering or design work, nor is funding available for all the legal or administrative costs of developing a plan. A copy of the Ministry's list of fundable and non-fundable items is attached to this report as appendix B.

PROBLEM AREAS AND SUGGESTIONS

GETTING STARTED

Legal Counsel

Municipalities considering commencing a waste management master plan should be aware that most waste management master plans, or individual facilities within the plan, will eventually be submitted for a hearing before the Environmental Assessment Board. It is of course necessary to have legal counsel to represent the proponent municipalities at the

hearing. The experience of several municipalities has shown that serious consideration should be given to retaining legal counsel from the very beginning of the process. An experienced environmental lawyer will be able to provide advice during the study for the preparation of material that will be relevant to the hearing. Some municipalities have found that when they hire a lawyer late in the study they are advised by the lawyer to go back a step or two and correct shortcomings in the study. This may involve more field work and original research. Having a lawyer involved from the beginning should help avoid this situation as well as providing full opportunity for your lawyer to be properly prepared for the hearing.

As noted above, the Ministry of the Environment Waste Management Master Plan Program does not provide 50% funding for the costs of the full legal services necessary for preparation of the study. The funding only covers specific legal assignments, like drafting right of entry agreements, and not the general legal advice necessary for proper preparation of the study for a hearing.

RECOMMENDATION 15

That the costs of retaining legal counsel for advice in the preparation of the waste management master plan study be included in the items fundable under the Waste Management Master Plan Program.

Consultants

Accompanying the generic terms of reference provided by the Ministry of the Environment is a consultant proposal call document. This document outlines the expertise the consultant should have, the requirement of a description of the study process, evaluation method to be used in the study, as well as cost estimates, resumes of key personnel and recent assignments on similar projects. The document also clearly states that the Steering Committee may disqualify or discontinue a consultant if the consultant is in a conflict of interest situation. A draft contract for the consultant is not included with the generic terms of reference.

The experience of municipalities involved in the waste management planning process has shown that the individuals working for the consultant on the study are a key factor. This is particularly so because of the long term nature of the study and the need for consistency in the research and evaluation methods. Municipalities should consider placing a clause in their agreement with the consultant requiring that certain key personnel be designated to perform the study and that those personnel may only be changed with the prior written consent of the proponent. Also the consultant should only be able to "sub-contract" out portions of the study with the written consent of the proponent.

It should also be noted that it may be necessary to hire more than one consultant in order to obtain the proper expertise for each of the various aspects of the study. Waste management master planning with the goal of preparation for an approval under the Environmental Assessment Act is relatively new and, as pointed out earlier, only one simple

master plan has yet been completed through the approval stage with 35 master plans in pre-approval stages, although a few environmental assessment studies have been completed for individual waste management facilities. This means that few consultants have had the opportunity to carry a waste management environmental assessment study through from beginning to end and develop true expertise in all aspects of the study.

General environmental or engineering consultants are not necessarily experts in the public participation process. A public participation expert is not necessarily an expert in social impact assessment. **Municipalities are advised to carefully review the background experience of consultants to be sure they hire those (even more than one firm) with the necessary expertise to successfully carry out all of the required aspects of the study.**

Municipal Administration During the Waste Management Planning Process

Many municipalities commencing the waste management master plan process will find they are facing a substantial new commitment of administrative resources. For regional municipalities already involved in waste management this will likely translate into additional new staff positions, for example a master plan policy and promotion manager and\or public participation and information coordinator. Municipal politicians, while they are likely accustomed to substantial time commitments to their municipalities, will find that membership on steering committees or other committees involved in the waste management planning process is a very significant time commitment.

For municipalities that are not under regional government the situation can be quite different. The Ministry of the Environment has available a draft inter-municipal agreement wherein local municipal governments agree to plan co-operatively for a joint waste management master plan study project. As well as detailing the membership of the Joint Waste Management Steering Committee, the agreement indicates which municipality will provide secretary-treasurer services to the committee and which municipality will be the "coordinating municipality" for matters pertaining to the waste management master plan.

The secretary-treasurer services include the transcribing, circulation and retaining of copies of all minutes of the steering committee meetings, the administering and accountability for all joint funds and the handling of correspondence as directed by the committee. This can be a significant administrative responsibility for municipalities with small staffs that are already fully employed with their usual duties, especially when the implied follow-up function is considered.

The coordinating municipality is responsible for:

a) the execution of all legal documents on behalf of the area municipalities;
b) invoicing the area municipalities on a monthly basis for capital costs incurred in the previous month;
c) payment of accounts owing by the area municipalities for work done on the master plan;
d) the recording and accountability of all funds both received and expended;

e) providing the province with supporting documentation from time to time and
f) providing the committee with interim financial statements on a quarterly basis.

This list of responsibilities can be more onerous than it first appears. For example, this agreement and others that may be necessary must be signed by all participating municipalities. There may be as many as ten municipalities involved and the coordinating municipality will be responsible for ensuring that all of the participating municipalities not only sign the agreement(s) but also that they all pass the necessary by-laws.

Since the coordinating municipality enters contracts on behalf of the group it is therefore responsible for making payments on time. If the coordinating municipality does not receive financial contributions from the group on time then it will have to make payments out of its own funds, it may even have to borrow to do so. Providing the Province with supporting documentation includes making the relevant applications for the provincial funding under the program, these payments are not always received when anticipated either.

Municipalities should be prepared for the consequences of making the commitments noted above. Additional staff are likely to be necessary. The inter-municipal agreement should be customized by municipalities for their own situation and to recognize and possibly compensate for the burden placed on the coordinating municipality. Financial contributions of member municipalities should perhaps be made in advance to avoid financial strain on the coordinating municipality. Interest could be credited to the contributors for the time between the contribution being made and the money being spent on group expenses.

PROPONENTS AUTHORITY

Under this general heading have been included the issues of municipal jurisdiction for planning and implementation agreements between municipalities, expropriation and compensation, and access to property.

Municipal Jurisdiction -- County Authority

The long standing issue here is county authority. For waste management master plan proponents in counties this is the number one concern. To some the whole waste management master plan process seems pointless if county governments have no authority to implement the final plan. In some instances lack of authority impedes the planning process. Complete co-operation of member municipalities is required but, municipalities targeted as potential facility site areas can opt out of the master plan.

The issue is not as simple as just giving waste management authority to counties because there are situations where groups of local municipalities are developing their own waste management master plan without county involvement.

The Provincial Government established an Advisory Committee on County Government to make recommendations for changes to county government authority. The Advisory Committee's recommendation on county authority for waste management is stated in recommendation number 29 of their report "Patterns For The Future" which is quoted below.

29. Counties be provided with permissive authority to assume any aspect of waste management responsibility where there is a two-thirds vote of the county council representing a majority of the local municipalities;

A) One or more local municipalities may be exempted from the county's jurisdiction and levy for the service if there is a two-thirds vote of the county council representing a majority of the local municipalities in favour of the exemption;

B) The county have authority to enter into agreements with any other municipalities for waste management;

C) The province set up a mechanism to assist local municipalities and counties to arrive at the terms and conditions for transferring assets and liabilities related to a waste management function which is being assumed by a county;

D) The province provide start-up technical and financial assistance to counties who assume a waste management responsibility.

The Association is supportive of this recommendation as amended to read as follows:

> Counties be provided with permissive authority to assume any aspect of waste management responsibility where there is a two-thirds vote of county council representing a majority of the local municipalities;

Notwithstanding the above, in such cases where there is a local or a separated municipality located within the boundaries of the county, with a significant amount of space remaining in its landfill site, counties be provided with permissive authority to assume, on a contractual basis with that municipality, any aspect of waste management responsibility where there is a two thirds vote of the county council representing a majority of the local municipalities.

It should be emphasized that the need for the recommended amendment to county authority is urgent since it is not clear that counties can even submit a waste management master plan for environmental assessment approval without county authority for waste management. And, while it is not necessary to obtain Environmental Assessment Act approval for recycling programs, counties have no authority to enter into agreements for capital spending to implement such programs.

RECOMMENDATION 16

That the Provincial Government, at the earliest possible opportunity, pass legislation that would put into effect the AMO position on county authority for waste management as noted above.

Municipal Authority in Non-County Situations

The recommendations regarding county authority are permissive and require a two-thirds vote of the county council representing a majority of the local municipalities, this means, of course, that some counties may decide not to adopt the authority. In this case there will be groups of local municipalities joining together to develop waste management master plans with no "upper tier" government authority in control of the process.

This situation leaves these groups of municipalities in the position of not having clear statutory authority to implement necessary aspects of their master plans and so the planning process itself is undertaken under the cloud of doubt as to how realistic their proposals may be.

There are three key areas where this lack of clear statutory authority presents itself, these are: enforcement of the inter-municipal agreement to undertake the waste management master plan study and abide by the results of that study; acquiring land as a group for the location of waste management facilities; authority to engage in reduction, recovery, recycling and reuse of waste and the appropriate acquisition of land, equipment, facilities and all of the other necessary functions in relation to these 4Rs programs.

The extent of municipal authority is subject to two streams of legal opinion. One is that since municipalities are the creation of statute then their authority should be strictly construed according to the precise wording of the relevant statute. The other is that where statutory authority is not explicit it must be reasonably implied to permit the municipality to properly carry out its functions. Naturally the line between these two streams of opinion is not always clear. However, they can be applied to the above key areas to show where doubt and potential problems can occur.

The enforcement of the waste management master plan study group agreement is most likely to arise when a municipality is selected as a potential area for a facility site. The chosen municipality may then withdraw from the study leaving the other municipalities with the task of re-organizing the study and commencing a lawsuit against the other municipality on the basis of damages arising from breach of the agreement. It is arguable based on the necessary implied authority interpretation that the inter-municipal agreement could be drafted to prevent opting out by inserting a clause that would give the study group the right to acquire land in any of the municipalities in the group even if that municipality later attempted to opt out of the agreement. However, the strict construction argument would

point out that while paragraphs 4 and 6 of Section 208 of the Municipal Act[4] explicitly speak to the acquisition of land in inter-municipal agreements for sewage and water works, paragraph 5 of section 208, which speaks to the joint operation of garbage disposal and collection, does not explicitly include the acquisition of land and therefore there is no authority for the inter-municipal agreement to include rights to acquire land. This argument naturally includes the right to acquire land generally, even when there is no opting out municipality, for the acquisition of land for any waste management facility.

RECOMMENDATION 17

That the Municipal Act (Section 208, paragraph 5) should be amended to explicitly give municipalities the authority to include acquisition of land for waste management purposes in inter-municipal agreements and the authority to agree to forego their right under paragraph 84 of section 210 of the Municipal Act (that is the right to approve of any land acquisition within their boundaries for the purpose of waste disposal).

The remaining key area relates to 4Rs activities (reduction, reuse, recycling and recovery). It can be implied that municipalities have this authority under section 210 paragraph 83 of the Municipal Act which gives the authority for collection and disposal of garbage and other refuse or ashes. However it is also arguable that 4Rs activities do not deal with garbage disposal since, for example, recyclable materials are not garbage but are a valuable resource used as raw materials in the production of other goods. The latter interpretation receives support from the fact that the Regional Municipality of Peel has thought it appropriate to prepare amendments to their Act that give the Region such authority.

RECOMMENDATION 18

That paragraph 83 of section 210 of the Municipal Act should be amended to explicitly include municipal authority for reduction, re-use, recycling and recovery of waste programs and that paragraph 5 of section 208 of the Municipal Act be amended similarly.

Regional Authority

The regional municipalities in Ontario were all created by their own statutes. The regional authorities in relation to waste management vary from region to region. It is fairly common for regions to have authority for waste disposal but not collection, which therefore is left to local municipalities. Control over haulage routes is also usually not explicitly a regional matter. Collection of waste however is now a more significant issue since it is necessary to co-ordinate collection with recycling and energy from waste activities.

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[4] R.S.O. 1980. c.302 and amendments thereto.

The terms of reference provide for recommendations for possible change in local legislative authority as part of stage 3A. The Region of Waterloo has recently had their statute amended to provide the region with more comprehensive and detailed authority over waste management.

Peel Region has also prepared a large number of amendments to its statute, many of which are based on the master plan report. The Peel Region amendments replace what was a one page section in their original statute that described the regional authority for waste management with a section that will cover close to ten pages and give details for regional powers for waste management under the following headings:

a. Waste disposal is Regional Duty
b. Region's Power to Exclude non-Peel Waste
c. Regional Powers re: Waste Disposal Facilities
d. Regional Powers re Recycling
e. "User Pay" Principle for Cost of Waste Disposal
f. Region and Area Municipalities May Designate Haul Routes
g. Regional Powers re Conversion of Waste
h. Regional Powers to Direct Waste
i. Regional Land Use Controls Re Waste and Recycling Facilities
j. Regional Right to Know Waste Content and to Inspect Vehicles and Buildings Re: Waste By-laws

Concern has also been expressed over the lack of authority for upper tier municipalities to prevent lower tier municipalities from appealing their decisions on facility siting to the Environmental Assessment Board.

RECOMMENDATION 19

That the Provincial Government carefully review the regional amendments with the purpose of amending legislation for regional municipalities, counties and local municipalities (where counties opt not to take on waste management authority) with the purpose of amending the relevant legislation, in addition to the recommended amendments above, so that regional municipalities, counties and groups of local municipalities can be assured of sufficient waste management authority. This should include the delegation of final decisions for facility siting to the upper tier with no appeal process for the area municipality. However, this review should not delay the implementation of recommendations #16, #17 and #18. Since counties are currently involved in waste management planning and municipalities are currently entering into inter-municipal agreements and engaging in 4R's activities, these recommendations should be acted on immediately and revised if necessary later, on the basis of the review of the regional amendments.

Expropriation and Compensation

[In the paragraphs under this heading, sections of statutes are summarized to be understandable to the layperson. Naturally a degree of detail and precision is lost. Complete sections of the relevant statutes are provided in Appendix - C]

When implementing waste management master plans municipalities will have to acquire land for facility sites. The power for municipalities to acquire land for municipal purposes without the consent of the owner (i.e. expropriate) is derived from section 193(1) of the Municipal Act. Subsection (5) of Section 193 indicates that municipalities (other than regional municipalities, with the exception of Metropolitan Toronto) may, with the approval of the Municipal Board, expropriate land in other municipalities.

Garbage collection and disposal are established as municipal purposes by paragraph 83 of Section 210 of the Municipal Act. Paragraph 84 of this section indicates that local municipalities (i.e. cities, towns, villages and townships, not counties and regions) may acquire land in other municipalities for garbage disposal purposes. This extra-municipal land acquisition is subject to approval of the Municipal Board and may be opposed at the Municipal Board hearing by the local municipality in which the land is situated.

When a municipality uses its expropriation power its actions will be governed by the Expropriations Act.[5] The Expropriations Act requires municipalities to compensate not only landowners whose land has been expropriated but also those whose land has suffered "injurious affection". Injurious affection is a reduction in market value of land or personal and business damages resulting from the construction and not the use of a municipal work that a municipality would have been liable for at common law if the construction were not under the authority of a statute. Injurious affection will also apply to a landowners' remaining land where only part of the land has been expropriated.

Where the land of an owner has been expropriated the compensation payable to the owner shall be based upon,

(a) the market value of the land;
(b) the damages attributable to disturbance;
(c) damages for injurious affection; and
(d) any special difficulties in relocation

The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer. In determining this value no account shall be taken of the use to which the land will be put after expropriation or any increase or decrease in value resulting from the prospect of expropriation.

If a business must be relocated because it is on expropriated land the business owner is to be compensated for the business loss resulting from the relocation. Subject to agreement

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[5] R.S.O. 1980, c.148 and amendments thereto.

between the business and the municipality, the business loss is to be determined six months after operating in the new location or three years after expropriation, whichever occurs first. If it is not feasible for the owner to relocate he or she may be compensated for the value of the good will of the business.

A person wishing to be compensated for injurious affection must make a claim in writing giving particulars within one year after the damage was sustained or became known to him or her.

Residential landowners are also to be compensated for the inconvenience and cost of finding another residence and for improvements to the property the value of which is not reflected in the market value of the land. Business landowners are allowed costs of finding new premises and both types of landowners may claim their moving and legal and other non-recoverable costs incurred in acquiring other premises. These allowances are over and above the compensation for the market value of the land. **This means that people who have their land expropriated actually receive more money than they normally would if their land was sold in an average open market transaction.**

Naturally it is in the best interest of both the municipality and the landowner to come to an agreement on the value of compensation for expropriated land or injurious affection. Where no agreement can be reached the Expropriations Act requires municipalities to make an offer based on the reports of professional appraisers. Where such an offer is refused by the landowner, the landowner or the municipality may require a meeting with a provincially appointed Board of Negotiation, whose decision is not binding, and/or an arbitration of the matter by the Municipal Board. The Municipal Board has the power to make an order directing a municipality to pay the reasonable legal, appraisal and other costs actually incurred by a landowner for the purposes of determining the compensation payable.

Access to Property

It is often necessary for proponents to enter onto private property to conduct tests and gather information necessary for the proper investigation under the waste management master plan study. Under the Environmental Assessment Act proper investigation of alternative sites requires reports based on an equal degree of testing for an accurate evaluation of alternative sites. If proponents cannot gain access to private property full geological testing may be obtained on one site but not on another because one property owner has refused access. The resulting report of suggested alternatives will therefore not meet Environmental Assessment Act approval requirements.

The only statutory authority available for municipalities to gain access to private property in this situation is the Expropriations Act. This act allows municipalities to expropriate limited rights in property for a limited time and so has potential to be used to expropriate those rights of entry and use that are necessary to conduct tests under a waste management master plan study. However this is a very cumbersome and time consuming process since it is in fact expropriation of private property rights.

The only exception to the normal expropriation procedures that is available to municipalities is to obtain an Order in Council dispensing with an inquiry. Under section 6 of the Expropriations Act a landowner, upon receiving notice that his or her property is to be expropriated, may require a hearing into the matter before a provincially appointed inquiry officer. Such inquiries are conducted in a fashion similar to legal proceedings and may include representation by legal counsel, examination for discovery of parties and examination of witnesses at the hearing. Each stage of the proceeding is subject to notice periods and may be subject to adjournments, so the inquiry process may take many months or perhaps even a year to complete.

Subsection 6(3) to the Expropriations Act allows municipalities to apply for an Order in Council dispensing with such an inquiry. This order would only dispense with the inquiry and all other expropriation procedures will still apply. Obtaining such an order has rarely been done and the procedures for doing so take several months in themselves. Since time constraints are a very significant factor in many waste management master plan studies this mechanism seems totally inappropriate as a means for municipalities to gain access to private property for necessary study purposes and yet, aside from negotiated agreements, it is the only one available.

RECOMMENDATION 20

That the Provincial Government create legislation with an efficient and fair procedure enabling proponents to enter and use private property for waste management planning study purposes where the property owner refuses consent.

TECHNICAL CHALLENGES

Under this heading will be considered the information gathering and analysis aspects of waste management master plan studies.

Stage One

Stage one of a waste management master plan study can be a rather more daunting task than it first appears. The study area description including waste inventories, evaluation of existing capacity and future requirements and a review of alternative technology options often means asking questions in municipalities that have never been asked before. The "simple" data gathering can be quite difficult. For example, in many rural municipalities there are many dump sites, each of which should be assessed, for which little waste volume or composition data is available, perpetual care must also be considered to ensure public health for sites that are to be closed.

Proponents and consultants feel that there should be a common waste data base to refer to and a "fill in the blanks" guideline to speed up this stage of the process.

The Ministry has commissioned a province-wide waste composition study. The draft terms of reference for the study indicate that the goal of the study is to determine waste commodity composition, the chemical composition, and the per capita generation rate for wastes entering Ontario municipal waste management facilities. The methodology of the study is to be designed and documented to assist municipalities in ongoing efforts to reduce waste disposal, i.e to increase 4Rs programs.

The study is to be carried out on a representative selection of municipalities for each population size range and geographical location so as to be able to extrapolate the results to other communities of similar size.

The following recommendations were forwarded to the Ministry of the Environment in January, 1989. They are based on a review of the draft terms of reference for the waste composition study and are made with the aim of rationalizing the waste management planning process.

RECOMMENDATION 21

A. That the terms of reference for the Waste Composition Study be amended to clearly indicate that the study should develop generic waste composition models covering the range of municipalities in the province that could be used as an "off the shelf" data base suitable for use in stage one reports under waste management master plans.

B. That wherever possible, but without effecting the accuracy and usefulness of the study, the municipalities selected under the study should be those that are currently engaged in the stage one waste composition data gathering for their own waste management master plans. This should be beneficial both to the municipality and to the consultant hired for the study since it will provide them with a chance to participate in the actual waste management master plan process.

C. That wherever possible, but without effecting the accuracy or usefulness of the study, municipalities selected under the study be those that will soon be commencing their waste management master plan study.

D. That once the study is complete for the first draft stage it should be submitted for comments to the Government ministries and agencies that are consulted for reviews during waste management master plan studies for their comments.

E. That the draft terms of reference be amended to include the creation of a model update mechanism so that the study can be more easily updated in the future and remain useful pursuant to recommendation 21A above.

F. That the resulting generic waste composition models developed pursuant to recommendation 21A above be listed as acceptable for use for waste management environmental assessment studies in a regulation under the Environmental Assessment Act.

G. That, if necessary, the Environmental Assessment Act be amended to allow for the creation of regulations as per recommendation 21F above.

H. That the draft terms of reference be amended to require that the data collected will be presented in a form that will readily usable for the generic alternative models created under the generic alternatives study. [see below, page 36]

If the recommendations listed above are adopted, the results of this study should answer some of the concerns that waste management master plan proponents have had about waste data collection.

Stage Two

Stage two of the waste management master plan process is the most difficult for proponents; the identification and analysis of preferred waste system alternatives bring out the most contentious aspects of the study process.

There is great concern among proponents that there is seemingly no limit to the extent of studies to be done. Further studies can be demanded by the public or by the Ministry. Proponents state that they often lack clear guidance from Ministry staff as to how much study is enough. Proponents have expressed a need for guidelines with generic models establishing at least threshold criteria for the whole range of waste management facility alternatives (energy from waste, composting, recycling, landfill, incineration, refuse derived fuels).

The Ministry is currently undertaking a generic alternatives study that should be used to meet these needs. The draft terms of reference for the generic alternatives study indicate that the goal is to create "off the shelf" generic models suitable for use by municipalities engaged in waste management master plan studies. The draft terms of reference also require the consultant to consult with public interest groups and government review agencies. The recommendations listed below were forwarded to the Ministry of the Environment in February, 1989 and are based on a review of these draft terms of reference and are aimed at ensuring the usefulness of the generic alternative models produced.

RECOMMENDATION 22

A. That the Environmental Assessment Board and those Government ministries and agencies that are consulted for reviews during waste management master plan studies be requested to comment on the first draft of the models created under the study.

B. That the Ministry of the Environment create a monitoring and review mechanism so that the generic alternatives models can be easily kept up to date.

C. That the generic alternatives developed be listed as acceptable in a regulation to the Environmental Assessment Act.

D. That the Environmental Assessment Act be amended, if necessary, to permit the creation of the regulation listed in recommendation number 22C above.

The results of these studies will only be useful if they can effectively aid in scoping the extent of alternative studies analysis to satisfy the Environmental Assessment Act requirements. This should also aid Ministry staff in fulfilling their roles as members of and advisors to waste management master plan steering committees.

Role of the Ministry of the Environment

There has been strong concern among proponents that they have had difficulty in obtaining consistent opinions from Ministry staff as to acceptability of study work. It was felt that this was because the Ministry resources were insufficient to deal with the demands of the municipal waste management situation in the province and that staff were not provided with clear ministry policy as to when Environmental Assessment Act requirements had been met. A clear Ministry policy that accepts the use of the results of the above noted studies should aid in rectifying this situation.

The Ministry has also recently released a statement that indicates Ministry staff will be taking a more pro-active role in the decision making process of the steering committees.

"To help ensure that the Terms of Reference are met at each stage, the Waste Management Branch representative on each Steering Committee will be taking a pro-active role. This representative will review the position of the Environmental Assessment Branch, the Ministry of the Environment technical reviewers, the other government reviewers, the public and advise on whether or not the Terms of Reference for a given stage have been met. The Steering Committee will be advised accordingly." [Information for Municipalities Undertaking the Development of a Waste Management Master Plan.]

The Ministry statement does not indicate that the Ministry representative is required to give detailed reasons why the Terms of Reference have not been met (if applicable) and what exactly will be required to be done, including an estimated cost benefit analysis of the

required work, to meet the Terms of Reference. It is suggested that this requirement be put into the Ministry statement.

It has also been expressed by proponents that there is a need for senior level Ministry staff agreement as to the acceptability of the work completed at each stage of the process. There is concern among proponents that without such clear and committed acceptance the Ministry staff may ultimately act against approval at the submission stage and may even testify against a proponent at an Environmental Assessment Board hearing should one be required.

RECOMMENDATION 23

That the Ministry of the Environment establish a procedure whereby if the Ministry is satisfied with the work completed at the end of each stage of a waste management master plan study a commitment letter will be issued. This commitment letter should be signed by senior staff at both the Waste Management Branch and the Environmental Assessment Branch and should express their entire satisfaction with the work completed to that stage and their commitment to support that work when the study is submitted for approval and at an Environmental Assessment Board hearing. Further, that if they are not satisfied with the work they issue a letter explaining exactly why the terms of reference have not been met and what work will be required to be completed, including an estimated cost benefit analysis of that additional work.

Resources

The resources of the Environmental Assessment Branch are reviewed on page 14 of this paper. The Waste Management Branch is in a similar situation. This branch currently has three people with direct responsibility for all of the waste management master plans.[6] It is common for each study to have two meetings per month including the technical and steering committees, this can sometimes mean sixty meetings per month divided between the three Ministry staff. Lack of Ministry staff attendance at meetings is a common concern among proponents and it is difficult to know in advance how important any one meeting may turn out to be.

It is likely that additional waste management master plans will be commenced before current studies are complete and so further stretch the resources of this branch. The Ministry has indicated a desire for Ministry staff to take a more pro-active role as members of steering committees and the Association welcomes the expressed intention of Ministry commitment to further participation; however, in order for this role to be properly fulfilled, the Waste Management Branch will need additional staff.

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[6] As of January, 1989.

RECOMMENDATION 24

That the Ministry of the Environment commit the financial resources for obtaining additional qualified staff to fulfil the Waste Management Branch functions under the Waste Management Master Plan Program. Further, that if additional staff cannot be committed to this program the Ministry should re-evaluate the role of this branch under this program.

The Environmental Assessment Board

Currently the Environmental Assessment Board has thirteen members, seven full-time and six part-time. Municipal waste management environmental assessment submissions are likely to go to hearings because of their complexity and controversial nature. These hearings may be before a joint board because land use planning matters are often involved in these projects. A joint board is composed of two members of the Environmental Assessment Board and one member of the Municipal Board.

Currently the Environmental Assessment Board is busy but is not heavily overloaded. The EA Board staff indicate that delays in obtaining hearing dates are often due to submissions that are incomplete or not in proper form and must be returned to the proponent for correction and re-submission before a hearing date can be obtained. **Proponents would be well advised to carefully review submission documentation requirements with EA Board staff before documents are submitted so a realistic time frame for a hearing can be obtained as soon after submission as possible.**

Although the EA Board is not overloaded at present, their limited full-time membership and staffing presents the imminent possibility of a sudden change in this situation. This would result in a heavy backlog of cases creating long delays in commencement of hearings. The scenario creating this situation can be seen when the number and nature of environmental assessment studies in the pre-submission consultation process is considered.

It will only take three substantial environmental assessment studies to be submitted for hearings at roughly the same time and all of the full-time board members will be fully occupied with those hearings for their duration. Many of the more than thirty municipal waste management master plan studies currently under way are large, complex and controversial. Past experience indicates that a hearing for one of these projects could possibly take up to a year.

Municipal waste management projects are of course not the only undertakings subject to the Environmental Assessment Act and likely to be submitted for hearings. The Ontario Waste Management Corporation will likely be submitting its hazardous waste facility proposal for West Lincoln to the Board before the end of 1989. Private waste management facilities are also now subject to environmental assessments. Other municipal sewer, water and road projects are subject to Environmental Assessment Act Hearings. The Environmental Assessment Board will soon be involved with intervenor funding hearings as well.

Approximately three hundred municipalities have less than a five year capability in their landfill sites left. Of the three hundred one hundred and sixty have just two years left. Since environmental assessments can take four to five years to complete many municipalities will be in urgent need for new waste management facilities by the time their environmental assessment is submitted for approval and a hearing. If the Environmental Assessment Board receives three substantial submissions at the same time the backlog of cases could mean long delays in getting to hearings and real waste disposal emergencies.

RECOMMENDATION 25

That the Ministry of the Environment plan for a significant expansion of the Environmental Assessment Board membership and staffing so that a backlog of submissions for hearings will be avoided.

PUBLIC PARTICIPATION

The Waste Management Committee of the Association intends to produce a separate report on public participation and consultation in waste management issues in order to fully address the variety of roles the public now plays. However, public consultation is a necessary requirement under the Waste Management Master Plan Program and so the matter will be briefly addressed in this paper.

As already noted the terms of reference for proponents under the Waste Management Master Plan Program require documentation of public input and the proponents' response to that input. This documentation must be included in the reports at the end of stages 1, 2B and 3A. Proper documentation and consultation with the public will require a public consultation program to be established early in the study process. This program goes beyond the establishment of a public liaison or advisory committee, although they should be involved in the program, and requires proponents to actively reach out and solicit public input.

This paper will not attempt to indicate what is an appropriate type of program for any or all proponents, but will include some suggestions for aspects of public participation programs for proponents.

The Ministry of the Environment is currently undertaking a public participation study. Phase one of this study is intended "to collect data, evaluate, and provide general conclusions about each public participation program being used in Waste Management Master Plan Studies, other identified environmental assessment projects and/or other non-environmental assessment projects."

The conclusion of this study may result in the development of a public participation manual for proponents. This study may also lead to a phase two study designed to, "outline and evaluate generic public involvement methods and techniques applicable to the needs in the

Waste Management Master Plan program." The phase one study is not yet complete and the decision to complete the phase two study has not yet been made. The following recommendation was forwarded to the Ministry of the Environment in February of 1989.

RECOMMENDATION 26

That since a public participation program is a requirement under the Waste Management Master Plan Program the phase two study for the creation of generic public participation models should be undertaken as soon as possible.

A public participation program should be viewed and designed as a two way dialogue providing the opportunity for the proponent and the public to inform and educate each other on the matters raised during the study. It should be remembered however, that the actual decision making will be the responsibility of the municipal councils involved.

The first step in developing a public participation program is identifying your public. The public should not be viewed as a homogeneous whole but should be identified in as many different groups as reasonably possible. These groups would include for example, local interest groups, local and non-local environmental groups, community leaders, multicultural interests and employment groups.

The identification of these sections of the public will help to indicate appropriate methods for contacting them and soliciting their input. This should be aggressively done as early in the process as possible. A common comment among proponents is that members of the public complain when the study is well advanced that no attempt was made to involve them in the process in spite of strong and imaginative efforts of the proponents to do so. It is not clear that the lack of public interest at the early stage of the study process can ever be completely overcome. It has been said that the public does not get involved until they feel they can actually influence a decision, if so then perhaps the scoping mechanism as proposed on page 16 of this paper will go some way to answering this problem.

It would appear that in spite of strong efforts on the part of proponents to involve the public from the start of the study, the most significant public participation will come in reaction to site selection. Proponents should be prepared to deal with public opposition at this stage in the most constructive manner possible. "Open houses" at which information is made available to the public in a small and quiet forum should be held prior to larger public meetings. People should be encouraged to ask questions at open houses and there should be the opportunity for a written record of the question and the questioner so that a written response can be provided if necessary. Open houses provide the opportunity for the active participation of people who may feel too uncomfortable to participate at a larger public meeting. It should also be made clear at open houses that public meetings will be held in the future so that there will be less chance of having members of the public try to turn an open house into a public meeting.

Public meetings should be organized by the proponent, if proponents do not hold public meetings they run the risk of special interest groups holding their own public meetings to which representatives of the proponent are not invited, or the organization or forum for which they have no control over if they are invited.

It is in the interest of all concerned that public meetings follow formal rules of procedure which should be published in advance and that they be held in appropriate forums like council chambers. The rules of procedure may include the following:

- there should be time limited speaking periods, clearly controlled so that no one individual dominates the meeting and all who wish to have the opportunity to question or comment. If the size of the audience and the meeting hall justify it, microphones in the audience with on\off control located at the chairpersons' podium are useful if available.
- all those wishing to speak should give their name and address before questioning or commenting.
- questions should be addressed to the chairperson.
- minutes of meetings should be taken and made available to the public.
- if a question cannot be answered immediately there should be a clear commitment given to provide an answer as soon as possible.
- where relevant the public should be informed of the limits of and costs of the information they request.

Other matters that are not procedural but should be considered include:

- follow-up reports should be prepared after the meeting; it should be remembered that the terms of reference of the Waste Management Master Plan Program require documentation of public concerns and how they were responded to.
- letter responses to questions that were not answered at the meeting should be mailed out as soon as possible.
- Media kits and briefs should be prepared and distributed to the members of the media at a reception before the public meeting. Panel members should make themselves available for interviews with the media after the meeting.
- panel members should include the most qualified people available to answer public concerns. If a question is asked for which no-one on the panel is truly qualified to answer, then the verbal answer should only include a commitment to find out the answer and provide it at a later date.

Public Education

It should not be assumed that open houses and public meetings will necessarily provide a complete picture of public opinion. Public opinion can be obtained by a variety of techniques. Statistically valid surveys and radio and television phone-in programs are two examples of other methods for soliciting public opinion. Local interest groups will likely provide written submissions as well.

There is concern among proponents about the lack of available public education materials respecting waste management systems, especially with respect to health risk standards. Since the Provincial Government reviews and accepts or rejects waste management master plan proposals there must be standards on which such decisions are based.

RECOMMENDATION 27

That Provincial Government standards for determining acceptability of waste management systems and technologies be made publicly available and be provided to proponents as early in the waste management master planning process as possible.

RECOMMENDATION 28

That the Ministry of the Environment make available personnel with an environmental health background who can attend at public meetings and explain how such standards are derived.

RECOMMENDATION 29

There is strong public concern regarding energy from waste emission estimates. Therefore the Ministry of the Environment should conduct a review of the City of London Victoria Hospital energy from waste facility since it is the most recently completed facility for using municipal solid waste and it passed Environmental Assessment Act requirements, and make the results publicly available.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

That the Planning Act be amended to formally include a form of environmental impact assessment as part of the planning process, such that there be no need to subject an undertaking to a separate environmental assessment process.

RECOMMENDATION 2

That the province, in consultation with municipalities, develop a provincial waste management strategy which addresses such matters as:

- provincial waste management goals which all municipal plans should include;
- the relative roles of the provincial and municipal levels of government and the private sector;
- a hierarchy of preferred waste management systems and methods;
- reasonable targets;
- a time frame of 40 years;
- a review/update mechanism.

RECOMMENDATION 3

That a scoping mechanism be developed and adopted under the Environmental Assessment Act, and that this mechanism:

- be a formal mechanism under the Act or the regulations to the Act;
- be administered by a Panel made up of one member of the Environmental Assessment Board who will not be eligible to subsequently sit on the Board hearing the issue;
- include at least two steps: pre-process and pre-hearing;
- include a formal notice procedure to ensure wide advertisement;

- involve all affected parties, including the proponent, the environmental assessment branch, the government review team, and any members of the public or any interest group with an interest in the matter;
- address the range of issues and the level of detail to which each issue should be studied;
- include a requirement that objections to issue be clearly documented;
- bind the Board.

RECOMMENDATION 4

That government review agencies develop explicit guidelines, setting out reasonable parameters for environmental assessments.

RECOMMENDATION 5

That government review agency circulation lists be limited to those agencies which can be reasonably expected to have concerns or comments on a particular proposal.

RECOMMENDATION 6

That a time limit of 60 days be imposed under the Act on the government review.

RECOMMENDATION 7

That each government review agency create an environmental assessment review section, made up of an appropriate number of qualified staff.

RECOMMENDATION 8

That, where one Ministry has several agencies within it commenting on an environmental assessment, comments be coordinated through a single "window".

RECOMMENDATION 9

That, in order to provide the Environmental Assessment Board with a more focused and operating mandate, the purpose of the Environmental Assessment Act be changed from the

"betterment of the people of Ontario" to "ensuring that undertakings subject to the Act are environmentally acceptable".

RECOMMENDATION 10

That there be a clear demarcation of roles and responsibilities between the Environmental Assessment Branch and the Waste Management Branch with respect to municipal waste management.

RECOMMENDATION 11

That the Waste Management Branch be the lead agency in municipal waste management.

RECOMMENDATION 12

That the Waste Management Branch coordinate a review of legislation relating to municipal waste management, and that this review be designed to streamline and eliminate duplication of requirements.

RECOMMENDATION 13

That the resources of the Environmental Assessment Branch be reviewed to ensure that adequate resources are in place.

RECOMMENDATION 14

That pre-submission consultation be given formal status through inclusion in the Environmental Assessment Act.

RECOMMENDATION 15

That the costs of retaining legal counsel for advice in the preparation of the waste management master plan study be included in the items fundable under the Waste Management Master Plan Program.

RECOMMENDATION 16

That the Provincial Government, at the earliest possible opportunity, pass legislation that would put into effect the AMO position on county authority for waste management as noted above.

RECOMMENDATION 17

That the Municipal Act (Section 208, paragraph 5) should be amended to explicitly give municipalities the authority to include acquisition of land for waste management purposes in inter-municipal agreements and the authority to agree to forego their right under paragraph 84 of section 210 of the Municipal Act (that is the right to approve of any land acquisition within their boundaries for the purpose of waste disposal).

RECOMMENDATION 18

That paragraph 83 of section 210 of the Municipal Act should be amended to explicitly include municipal authority for reduction, re-use, recycling and recovery of waste programs and that paragraph 5 of section 208 of the Municipal Act be amended similarly.

RECOMMENDATION 19

That the Provincial Government carefully review the regional amendments with the purpose of amending legislation for regional municipalities, counties and local municipalities (where counties opt not to take on waste management authority) with the purpose of amending the relevant legislation, in addition to the recommended amendments above, so that regional municipalities, counties and groups of local municipalities can be assured of sufficient waste management authority. This should include the delegation of final decisions for facility siting to the upper tier with no appeal process for the area municipality. However, this review should not delay the implementation of recommendations #16, #17 and #18. Since counties are currently involved in waste management planning and municipalities are currently entering into inter-municipal agreements and engaging in 4R's activities, these recommendations should be acted on immediately and revised if necessary later, on the basis of the review of the regional amendments.

RECOMMENDATION 20

That the Provincial Government create legislation with an efficient and fair procedure enabling proponents to enter and use private property for waste management planning study purposes where the property owner refuses consent.

RECOMMENDATION 21

A. That the terms of reference for the Waste Composition Study be amended to clearly indicate that the study should develop generic waste composition models covering the range of municipalities in the province that could be used as an "off the shelf" data base suitable for use in stage one reports under waste management master plans.

B. That wherever possible, but without effecting the accuracy and usefulness of the study, the municipalities selected under the study should be those that are currently engaged in the stage one waste composition data gathering for their own waste management master plans. This should be beneficial both to the municipality and to the consultant hired for the study since it will provide them with a chance to participate in the actual waste management master plan process.

C. That wherever possible, but without effecting the accuracy or usefulness of the study, municipalities selected under the study be those that will soon be commencing their waste management master plan study.

D. That once the study is complete for the first draft stage it should be submitted for comments to the Government ministries and agencies that are consulted for reviews during waste management master plan studies for their comments.

E. That the draft terms of reference be amended to include the creation of a model update mechanism so that the study can be more easily updated in the future and remain useful pursuant to recommendation 21A above.

F. That the resulting generic waste composition models developed pursuant to recommendation 21A above be listed as acceptable for use for waste management environmental assessment studies in a regulation under the Environmental Assessment Act.

G. That, if necessary, the Environmental Assessment Act be amended to allow for the creation of regulations as per recommendation 21F above.

H. That the draft terms of reference be amended to require that the data collected will be presented in a form that will readily usable for the generic alternative models created under the generic alternatives study.

RECOMMENDATION 22

A. That the Environmental Assessment Board and those Government ministries and agencies that are consulted for reviews during waste management master plan studies be requested to comment on the first draft of the models created under the study.

B. That the Ministry of the Environment create a monitoring and review mechanism so that the generic alternatives models can be easily kept up to date.

C. That the generic alternatives developed be listed as acceptable in a regulation to the Environmental Assessment Act.

D. That the Environmental Assessment Act be amended, if necessary, to permit the creation of the regulation listed in recommendation number 22C above.

RECOMMENDATION 23

That the Ministry of the Environment establish a procedure whereby if the Ministry is satisfied with the work completed at the end of each stage of a waste management master plan study a commitment letter will be issued. This commitment letter should be signed by senior staff at both the Waste Management Branch and the Environmental Assessment Branch and should express their entire satisfaction with the work completed to that stage and their commitment to support that work when the study is submitted for approval and at an Environmental Assessment Board hearing. Further, that if they are not satisfied with the work they issue a letter explaining exactly why the terms of reference have not been met and what work will be required to be completed, including an estimated cost benefit analysis of that additional work.

RECOMMENDATION 24

That the Ministry of the Environment commit the financial resources for obtaining additional qualified staff to fulfil the Waste Management Branch functions under the Waste Management Master Plan Program. Further, that if additional staff cannot be committed to this program the Ministry should re-evaluate the role of this branch under this program.

RECOMMENDATION 25

That the Ministry of the Environment plan for a significant expansion of the Environmental Assessment Board membership and staffing so that a backlog of submissions for hearings will be avoided.

RECOMMENDATION 26

That since a public participation program is a requirement under the Waste Management Master Plan Program the phase two study for the creation of generic public participation models should be undertaken as soon as possible.

RECOMMENDATION 27

That Provincial Government standards for determining acceptability of waste management systems and technologies be made publicly available and be provided to proponents as early in the waste management master planning process as possible.

RECOMMENDATION 28

The Ministry of the Environment make available personnel with an environmental health background who can attend at public meetings and explain how such standards are derived.

RECOMMENDATION 29

There is strong public concern regarding energy from waste emission estimates. Therefore the Ministry of the Environment should conduct a review of the City of London Victoria Hospital energy from waste facility since it is the most recently completed facility for using municipal solid waste and it passed Environmental Assessment Act requirements, and make the results publicly available.

ACKNOWLEDGMENTS

The Association expresses its appreciation to the members of the AMO Waste Management Committee who volunteered their time in producing this document, as well as to the Association staff instrumental in the development of the recommendations to revise the Waste Management Approvals Process.

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- APPENDIX A -

INFORMATION FOR MUNICIPALITIES UNDERTAKING THE DEVELOPMENT OF A WASTE MANAGEMENT MASTER PLAN

Good planning is essential for proper municipal waste management. The Ministry established the Waste Management Master Plan program to provide municipalities with financial and technical assistance to carry out these planning efforts. To ensure that effective planning takes place and to streamline the approvals process for facilities which result from the Master Plan, it is imperative that the Terms of Reference for the Master Plan meet the planning requirements of the Environmental Assessment Act.

Experience across the Province under the Master Plan program has indicated that considerable effort is required by the Ministry and the Steering Committee to ensure that the Terms of Reference are met at each stage of the plan before proceeding to the next stage. This effort is necessary because decisions have been made at a particular stage without the benefit of all the required information, especially environmental assessment information. This practice is not acceptable to the Ministry.

ROLES

To help ensure that the Terms of Reference are met at each stage, the Waste Management Branch representative on each Steering Committee will be taking a pro-active role. This representative will review the position of the Environmental Assessment Branch, the Ministry of the Environment technical reviewers, the other government reviewers, the public and advise on whether or not the Terms of Reference for a given stage have been met. The Steering Committee will be advised accordingly. Similarly, we urge the Steering Committee Chairperson to obtain the views of the committee members to determine the position of the Steering Committee on whether or not the Terms of Reference have been met. If it is determined by the Steering Committee that the Terms of Reference have not been adequately met, it will be up to the consultant to address the concerns to the satisfaction of the Steering Committee. Unless the Steering Committee is satisfied that the requirements of the Terms of Reference have been met at each stage, the Waste Management Branch is prepared to recommend that the Minister suspend funding until such time at which they are met.

ENVIRONMENTAL ASSESSMENT ACT REQUIREMENTS

The Environmental Assessment Act is intended to promote good planning. To achieve this, the Act requires that a broad range of alternatives are comprehensively examined (Clause 1(c) of the Act), with an analysis of the net environmental effects, advantages and disadvantages of each alternative, and the narrowing down of the alternatives to the preferred choice(s). The evaluation process should be clearly explained in the documents to provide the rationale for the preferred choice.

In order to the meet the Terms of Reference for a Waste Management Master Plan, Environmental Assessment Act requirements must be met. The Environmental Assessment Branch advisor is in the best position to advise the Steering Committee on whether or not the requirements of the Act have been satisfied at each stage. Because of the importance of these comments, the Environmental Assessment Branch advisor will send all correspondence to the Chairperson of the Steering Committee with a copy to the consultant and the Waste Management Branch representative. To ensure that the Environmental Assessment advisor can effectively monitor the concerns raised by reviewers at each stage, the consultant will be required to send copies of all reviewers' comments to the Environmental Assessment advisor. As well, the final report of each stage will contain, or have appended to it, a compendium of all reviewers' and public comments at that stage and a discussion of how they are being addressed.

GRANT PAYMENTS

Payments are based on the monthly billings of the consultant. Effective April 1, 1986, a 10 per cent holdback will be taken on all payment requests under the Waste Management Master Plan program. The holdback will be released at the conclusion of each stage, after the document has been accepted and approved by the Steering Committee.

CONCLUSION

The Ministry realizes that these procedures could lengthen the time required to complete the Master Plan. We feel, however, that any extension will be outweighed since costly delays in the approvals process will be minimized and planning and decision making will be enhanced.

- APPENDIX B -

MINISTRY OF THE ENVIRONMENT'S FUNDABLE ITEMS UNDER THE WASTE MANAGEMENT MASTER PLAN PROGRAM

The following is a list of items which are fundable under the Ministry's Waste Management Master Plan Program, as well as a list of items which are specifically not fundable.

This should be used as a guide. Any item which is not specifically mentioned, and which requires clarification, should be discussed at the outset with the Waste Management Branch. Only those items specifically approved will be funded.

ITEMS FUNDABLE

(a) Consultants:

- Study consultant costs under contract (time plus expenses)

(b) Study Co-ordinators:

- Study co-ordinator (time plus allowable expenses) when under contract, and dedicated to the study.
- for co-ordinator's office, allowable expenses include:*
  - equipment rental/lease as necessary (for dedicated equipment only)
  - equipment service costs (from leased items)
  - printing and photocopying (e.g. flyers, masters, promotional pieces, minutes, etc.)
  - advertising
  - telephone rental and call charges, telephone listing (calls outside study area must be pre-approved)
  - postage
  - office supplies

- travel (mileage when attending meetings, study workshops, public presentations, etc., specific to the study, and meal allowance when travelling outside study area)

(c) Legal Fees

- legal fees for specific assignments (i.e., document preparation pertaining directly to the study, such as right-of-entry agreements, draft authority documents, etc.)*

(d) Public Meetings

- holding of public meetings, seminars, workshops, etc. by the study Steering Committee and/or the Public Advisory Committee.

(e) Investigations

- site investigation work (e.g. preliminary hydrogeology) required for site proofing for EA level of detail.

(f) Public Advisory Committee

- expenses (e.g. advertising, mailing, printing, meeting rooms/hall rental) resulting from Committee work.*

* Note: Items are subject to prior approval by both the Steering Committee and the Ministry of the Environment, in accordance with the established budget for the study.

ITEMS NOT FUNDABLE

(a) Staff:

- municipal staff salaries and overhead (full or part-time)

(b) Travel:

- travel expenses (for attendance at meetings, conferences, seminars, etc., and fact-finding/field trips, etc.) except for certain travel expenses incurred by co-ordinators under contract

(c) Office Expenses:

- Office rent
- subscriptions
- drafting equipment/supplies
- equipment purchases
- hospitality

(d) Purchases:

- land purchases
- options purchases

(e) Legal Fees:

- legal fees for advisory services, other than for specific assignments indicated as being fundable.

(f) Public Involvement:

- public activities by groups and/or individuals not approved by both the Steering Committee and the Ministry of the Environment.

(g) Investigations:

- detailed site investigation work (e.g. hydrogeology for EPA related activities).

(h) Hearings:

- costs related to hearings for approvals and implementation.

(i) Public Advisory Committee:

- honorariums

- travel costs (including mileage, meals, incidentals, etc.), telephone charges, supplies and equipment, unless previously approved by the Steering Committee and the Ministry of the Environment.

- APPENDIX C -

Municipal Act R.S.O., 1980, c. 148 as amended

Interpretation

1. In this Act,

6. "city", "town", "village", "township" and "county" respectively mean a city, town, village, township or county, the inhabitants of which are a body corporate within the meaning and for the purposes of this Act;

10. "land" includes lands, tenements and hereditaments, and any estate or interest therein, and any right or easement affecting them, and land covered with water;

11. "local municipality" means a city, town, village and township;

16. "Municipal Board" means the Ontario Municipal Board;

18. "municipality' means a locality the inhabitants of which are incorporated;

Part XII

Acquisition of Land and Compensation Land Taken or Injuriously affected

Interpretation

192. In this Part,

(a) "expropriation" means taking without the consent of the owner, and "expropriate" and "expropriating" have corresponding meanings;

(b) "judge" means a judge of the county or district court of the county or district in which the land or any part of it is situate;

(c) "owner" includes a mortgagee, lessee, tenant, occupant, and a person entitled to a limited estate or interest in land, trustee in whom land is vested, a committee of the estate of a mentally incompetent person, an executor, an administrator, and a guardian. R.S.O. 1980, c.302, s.192.

Power to acquire or expropriate land

193.--(1) The council of every corporation may pass by-laws for acquiring or expropriating any land required for the purposes of the corporation, and for erecting and repairing buildings thereon, and for making additions to or alterations of such buildings, and may sell or otherwise dispose of the same when no longer so required.

Lease

(2) Without limiting the generality of this section, in subsection (1) "otherwise dispose of" shall be deemed to include and to have always included a lease.

Taking more land than required

(3) Where in the exercise of its powers of acquiring or expropriating land it appears to the council that it can acquire a larger quantity of land from any particular owner at a more reasonable price and on terms more advantageous than those upon which it could obtain the part immediately required for its purposes, the council may acquire or expropriate such larger quantity and may afterwards sell and dispose of so much of it as is not so required.

Land to be described in by-law etc.

(4) A by-law for entering on or expropriating land shall contain a description of the land and, if it is proposed to expropriate an easement or other right in the nature of an easement, a statement of the nature and extent of the easement to be expropriated.

Power to expropriate land of another municipality R.S.O. 1980, c.303

(5) A municipality as defined in the *Municipal Affairs Act*, including The Municipality of Metropolitan Toronto, that has authority to expropriate land may, with the approval of the municipal Board, exercise this authority in respect of the land of another such municipality.

Use of lands owned by corporation

(6) The council of every corporation may pass by-laws providing for the use by the public of lands of which the corporation is the owner and for the regulation of such use and the protection of such lands. R.S.O. 1980, c.302, s.193.

210. By-laws may be passed by the councils of local municipalities:

Collection, removal and disposal of garbage, etc.

83. For establishing and maintaining a system for the collection, removal and disposal of garbage or of garbage and other refuse or of ashes, garbage and other refuse, and for contracting with any person for the collection, removal and disposal by him of ashes, garbage and other refuse upon such terms and conditions as may be considered expedient, and for erecting and maintaining with the approval of the Ministry of Health such buildings, machinery and plant as may be considered necessary for the purposes of this paragraph.

(a) The corporation may borrow money for any of the purposes of this paragraph by the issue of debentures and may levy therefor in respect of any of the purposes of this paragraph on the rateable property in the municipality or in defined areas thereof.

Acquisition of land for garbage disposal

84. For acquiring land in any local municipality or in territory without municipal organization for any of the purposes of paragraph 83.

(a) No land shall be acquired in a local municipality under this paragraph without the approval of the local municipality, which approval may be granted upon such terms and conditions as may be agreed upon, or failing such approval or agreement, the approval of the Municipal Board, and no land shall be acquired in territory without municipal organization under this paragraph without the approval of the Municipal Board.

(b) The Municipal Board, before giving its approval under this paragraph, shall hold a public hearing and shall give or cause to be given at least ten days notice of the hearing to the clerk of the local municipality concerned and to such other persons in such manner as the Municipal Board may direct and the Municipal Board, as a condition to giving any such approval, may by its order impose such restrictions, limitations and conditions respecting the acquisition or use of such land as to the Municipal Board may appear necessary or expedient and the Municipal board may order the amendment of any official plan or of any by-law passed under section 39 of the *Planning Act* to permit the use of the land for the purposes for which it is to be acquired.

Municipal Affairs Act. R.S.O., 1980, c.303 as amended

Interpretation

1. In this Act,

(f) "municipality" means the corporation of a county, city, town, village, township or improvement district and includes a local board thereof and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;

Expropriation Act. R.S.O., 1980, c.148 as amended

Interpretation

1.(1) In this Act,

(a) "approving authority" means the approving authority as determined under section 5;

(b) "Board" means the Ontario Municipal Board continued under the *Ontario Municipal Board Act.*

(c) "expropriate" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers, but does not include the taking of land for the widening of a highway where entry is deferred under section 196 of the *Municipal Act*:

(d) "expropriating authority" means the Crown or any person empowered by statute to expropriate land;

(e) "injurious affection" means,

(i) where a statutory authority acquires part of the land of an owner,

(A) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works theron or by the use of the works theron or any combination of them, and

(B) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a stature,

(ii) where the statutory authority does not acquire part of the land of an owner,

(A) such reduction in the market value of the land of the owner, and

(B) such personal and business damages,

resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhance by unified ownership with those acquired;

(f) "judge", except where otherwise described, means a judge of the county or district court of the county or district in which the land or the greater part of it is situate;

(g) "land" includes any estate, term, easement, right or interest in, to, over or affecting land;

(h) "owner" includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

(k) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper land registry or sheriff's office, and includes a person shown as a tenant of land on the last revised assessment roll;

(m) "statutory authority" means the Crown or any person empowered by stature to expropriate land or cause injurious affection;

(n) "tenant" includes a lessee or occupant occupying premises under any tenancy whether written, oral or implied.

Application of Act

2.--(1) Notwithstanding any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies. R.S.O. 1970, c.154, s.2(1)

Approval of intention to expropriate

4.--(1) An expropriating authority shall not expropriate land without the approval of the approving authority as determined under section 5.

Approving authority

5.--(1) Subject to subsection (4), (5) and (6), the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

(a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality;

Notice of Intention to expropriate

6.--(1) Upon applying for an approval under section 4, an expropriate authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate.

Notification for hearing

(2) Any owner of lands in respect of which notice is given under subsection (1) who desires a hearing shall so notify the approving authority in writing,

(a) in the case of a registered owner, served personally or by registered mail within thirty days after he is served with the notice, or, where he is being served with the notice by publication, within thirty days after the first publication of the notice;

(b) in the case of an owner who is not a registered owner, within thirty days after the first publication of the notice.

Reparation

11. Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to grant other lands, in which case, the compensation shall be determined having regard to such undertaking, and if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. R.S.O. 1970, c.154,2.11.

Compensation

13.--(1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act.

Idem

(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon,

(a) the market value of the land;

(b) the damages attributable to disturbance;

(c) damages for injurious affection; and

(d) any special difficulties in relocation,

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause (b) for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use. R.S.O. 1970, c.154, s.13.

Market Value

14.--(1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

Idem

(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.

Idem

(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting there from the market value of the owner's land after the taking. R.S.O. 1970, c.154, s.14 (1-3).

Idem

(4) In determining the market value of land, no account shall be taken of,

(a) the special use to which the expropriating authority will put the land;

(b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation; or

(c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health. R.S.O. 1970, c.154, s.14(4); 1972, c.24, s.1(1).

Allowance for disturbance: owner other than tenant

18.--(1) The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including,

(a) where the premises taken include the owner's residence,

(i) an allowance to compensate for inconvenience and the cost of finding another residence of 5 percent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation, and

(ii) an allowance for improvements the value of which is not reflected in the market value of the land;

(b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for sale on the date of expropriation; and

(c) relocation costs, including,

(i) the moving costs, and

(ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

Tenant

(2) The expropriating authority shall pay to a tenant occupying expropriated land in respect of disturbance so much of the cost referred to in subsection (1) as is appropriate having regard to,

(a) the length of the term;

(b) the portion of the term remaining;

(c) any rights to renew the tenancy or the reasonable prospects of renewal;

(d) in the case of a business, the nature of the business; and

(e) the extent of the tenant's investment in the land. R.S.O. 1970, c.154, s.18.

Business loss

19.--(1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, which ever occurs first.

Good Will

(2) The Board may, in determining compensation on the application of the expropriating authority or an owner, include an amount not exceeding the value of the good will of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate. R.S.O. 1970, c.154, s.19.

Compensation for injurious affection

21. A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection. R.S.O. 1970, c.154, s.21.

Claim for compensation for injurious affection

22.--(1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred.

Idem, where owner under disability

(2) Where the person who is injuriously affected is a minor, a mental incompetent or a person incapable of managing his affairs, his claim for compensation shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death, and, if not so made, the right to compensation is forever barred. R.S.O. 1970, c.154, s.22.

Offer

25.--(1) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within three months after the registration of a plan under section 9 and before taking possession of the land,

(a) serve upon the registered owner,

(i) an offer of an amount in full compensation for his interest, and

(ii) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection 19(1); and

(b) offer the registered owner immediate payment of 100 per cent of the amount of the market value of the owner's land as estimated by the expropriating authority, and the payment and receipt of that sum is without prejudice to

the rights conferred by this Act in respect of the determination of compensation and is subject to adjustment in accordance with any compensation that may subsequently be determined in accordance with this Act or agreed upon.

Furnishing Appraisal report

(2) The expropriating authority shall base its offer of compensation made under subsection (1) upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner oat the time the offer is made.

Extension of time

(3) The expropriating authority may, within the period mentioned in subsection (1) and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to the judge for an order extending any time referred to in subsection (1), and the judge may in his order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause (1) (a) upon such conditions as may be specified in the order.

Failure to serve

(4) If any registered owner is not served with the offer required to be served on him under subsection (1) within the time limited by subsection (1) or by an order of a judge under subsection (3) or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of registration of the plan. R.S.O. 1970, c.154, s.25.

Choice of proceedings, negotiation or arbitration

26. Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and, in the case of injurious affection, section 22 has been complied with, or in the case of expropriation, section 25 has been complied with, or the time for complying therewith has expired,

(a) the statutory authority or the owner may serve notice of negotiation upon the other of them and upon the board of negotiation stating that it or he, as the case may be, requires the compensation to be negotiated under section 27; or

(b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings, the statutory authority or the owner may serve notice of arbitration

upon the other of them and upon the Board to have the compensation determined by arbitration. R.S.O. 1970, c.154, s.26.

Costs

34.--(1) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is 85 per cent, or more, of the amount offered by the statutory authority, the Board shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to a taxing officer of the Supreme Court who shall tax and allow the costs in accordance with this subsection and the tariffs and rules prescribed under clause 46 (d).

Idem

(2) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is less than 85 per cent of the amount offered by the statutory authority, the Board may make such order, if any, for the payment of costs as it considers appropriate, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to a taxing officer of the Supreme Court who shall tax and allow the costs in accordance with the order and the tariffs and rules prescribed under clause 46 (d) in like manner to the taxation of costs awarded on a party and party basis. 1971, c.12,2.2.

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87-4	Response to the Rental Housing Protection Act
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89-3 AMO Report on Draft Housing Policy Statement
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- AMO Waste Management Study: The Waste Management Planning and Approvals Process

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